1354.

SUPREME COURT OF THE UNITED STATES.

No. 135.

GEORGE D. PRENTICE AND GEORGE W. WEISSINGER, CO-PARTNERS, DOING BUSINESS UNDER THE STYLE & FIRM OF PRENTICE & WEISSINGER, PLAINTIFFS IN ERROR,

vs.

PLATOFF ZANE.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR WEST VIRGINIA.

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J. & G. S. Gideon, printers.

Pleas held before the honorable John W. Brockenbrough, judge of the United States district court for the western district of Virginia, at Wheeling, on Wednesday, the ninth day of September, in the year of our Lord one thousand eight hundred and forty-six, and in the 71st year of the independence of the United States of America.

Be it remembered, that heretofore, to wit, on the 7th day of November, in the year 1845, came George D. Prentice and George W. Weissinger, co-partners, doing business under the style and firm of Prentice & Weissinger, by their attorney, and sued out of the clerk's office of the said district court of the United States a writ of capias ad respondendum against Platoff Zane, which writ, with the endorsement and return thereon made, is in the words and figures following:

The President of the United States of America to the marshal of the western district of Virginia, greeting:

You are hereby commanded to take Platoff Zane, a citizen and inhabitant of the State of Virginia, and of the western district thereof, if he be found in your district, and him safely keep, so that you have his body before the judge of the district court of the United States for the western district of Virginia, at Wheeling, on the Thursday after the first Monday in December next, to answer George D. Prentice and George W. Weissinger, co-partners, doing business under the style and firm of Prentice & Weissinger, citizens and inhabitants of the State of Kentucky, of a plea of debt for five thousand four hundred and thirty-seven dollars and fifty cents, damage $50 00, and have then there this writ.

Witness the honorable Isaac S. Pennybacker, judge of the district court of the United States for the western district of [SEAL.] Virginia, at Wheeling, this 7th day of November, anno domini 1845, and in the 70th year of the independence of the United States of America.

RICHARD W. MOORE,
Clerk U. S. D. C. W. district, Va.

Endorsement.

This is an action of debt on a promissory note in writing, for the payment of $5,437 50. Damage $50 00. No bail required.

M. C. GOOD, *p. q.*

Return. Executed November 13, 1845.

THOMAS P. SHALLCROSS, *Deputy*,
For JAS. POINTS, *Marshal for W. district of Virginia.*

And at another day, to wit, at rules held in the clerk's office of the said district court of the United States on the Thursday after the first

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Monday in February, 1846, came the plaintiffs, by their attorney, and filed their declaration against the defendant, which declaration is in these words :

District court of the United States for the western district of Virginia, holden at Wheeling. Rules 184 .

George D. Prentice and George W. Weissinger, co-partners, doing business under the style and firm of " Prentice & Weissinger," both of the city of Louisville, and State of Kentucky, and citizens of the State of Kentucky, by M. C. Good, their attorney, complain of Platoff Zane, being in custody, &c., of a plea that he render unto them, the said plaintiffs, the sum of five thousand four hundred and thirty-seven dollars and fifty cents (5,437 50,) which he owes to and unjustly detains from them. For that, whereas the said Platoff, heretofore, to wit, on the 28th day of November, 1836, at Philadelphia, to wit, in the county of Ohio aforesaid, and within the judicial district aforesaid, made his certain promissory note in writing, bearing date on the same day and year last aforesaid, and thereby then and there promised to pay, (five years after the date thereof, to the order of one James H. Johnson, the said sum of five thousand four hundred and thirty-seven dollars and fifty cents ($5,437 50) above demanded,) without defalcation, for value received. And then and there delivered said promissory note in writing to the said James H. Johnson, and the said James H. Johnson, to whose order the said sum of money in said promissory note mentioned was made payable, afterwards, to wit, on the day and year last aforesaid, at Philadelphia aforesaid, to wit, at the county of Ohio aforesaid, being then a citizen of the State of Kentucky, (by the name and signature of James Ham. Johnson,) the same being unpaid, for value received, endorsed and assigned said promissory note to the plaintiffs, and then and there delivered said promissory note to the plaintiffs, of all which the said defendant afterwards, to wit, on the day of 1836, to wit, at Ohio county aforesaid, had notice ; whereby an action accrued to the plaintiffs to have and demand of said defendant the said sum of $5,437 50, in said promissory note specified, when the same became due, and payable according to the tenor thereof ; yet the plaintiffs aver, that although the said sum of $5,437 50 above demanded, and in said promissory note mentioned, has been long due and payable according to the tenor of said note, that the said defendant has not paid the same, or any part thereof, either to the said James H. Johnson, or to the plaintiffs, or either of them, although often requested so to do, but to pay the same hath hitherto wholly neglected and refused, and still neglects and refuses to pay the same to the plaintiffs, to the damage of the plaintiffs $, and therefore they sue.

GOOD, *for plaintiffs*.

Whereupon, the defendant being arrested, and not appearing, on the motion of the plaintiffs, by their attorney, it is ordered, that judgment be entered for the plaintiffs against the defendant for the debt and interest in the declaration mentioned, unless the said defendant should appear and plead to issue at the then next rules.

At which day, to wit, at rules held in the office of the said district court of the United States on the Thursday after the first Monday in March, 1846, the defendant still failing to appear, on the motion of the plaintiffs, by their attorney, it is ordered that the last order made against him in this cause be confirmed.

And at another day, to wit, at a district court of the United States held for the western district of Virginia, at the city of Wheeling, on Thursday, the ninth day of April, A. D. 1846, came the parties, by their attorneys, and on the motion of the defendant, by his attorney, the office judgment had in this cause is set aside, and the said defendant for plea says, that he does not owe the said sum of money in the declaration demanded, or any part thereof, in manner and form as the plaintiffs have thereof complained against him; and of this he puts himself upon the country, &c. To which the plaintiffs, by their attorney, replied generally; and thereupon came a jury, to wit: Thomas W. Harrison, William Underwood, Reason Ingram, Henry Lockman, George Mendel, William H. Houston, John M. Hamilton, Philip Bier, Andrew White, Louis Bayha, Daniel S. Lee, and Hiram Martin, who, being elected, tried, and sworn the truth to speak upon the issue joined, upon their oaths do say, that they find that the note in these words—"5,437$\frac{50}{100}$. Philadelphia, November 28th, 1836. Five years after date, I promise to pay to the order of James H. Johnson, five thousand four hundred and thirty-seven $\frac{50}{100}$ dollars, without defalcation, for value received. Platoff Zane"—was made by the defendant, and delivered to the payee, at the date thereof, at Philadelphia, in the State of Pennsylvania, and that said note was endorsed by the payee, and delivered by him, so endorsed, to one John Stivers, at the city of Louisville, in the State of Kentucky, before the maturity thereof; that there has not been any evidence submitted to us that said Stivers paid value therefor, or that there was any consideration for such endorsement, unless the same ought to be inferred from the matters herein stated; but should the court be of opinion that, from the facts and evidence herein found, the jury ought to presume that said endorsement to said Stivers was made for a valuable consideration, then we find that the same was made for full value received by the payee from said Stivers therefor; otherwise we find that the same was made without any consideration or value therefor. And we further find, that said Stivers afterwards, but before the said note became payable, delivered the same (endorsed in blank by the payee as aforesaid, but not endorsed by the said Stivers) to the plaintiffs, at the city of Louisville aforesaid, for the purposes and upon the consideration shown in the deposition of Jacob Anthony, and the record of a bill, answer, and cross bill and answers; which deposition and record are in the words and figures following, to wit: Also the deposition of Jacob Anthony, taken at the same time and place, for the same purpose; the deponent being of lawful age, and first duly sworn, deposes and says:

Question by plaintiffs. State whatever you may know in regard to

the consideration given by Prentice & Weissinger for the note in controversy between these parties.

Answer. I was clerk of Prentice & Weissinger at the time the note was passed by Stivers to Prentice & Weissinger. The note was passed to Prentice & Weissinger by Stivers to indemnify them for money paid by them, as his endorsers, in bank. The money paid, and for which they were liable, and have since paid, largely exceeded the amount of this note.

By same. State whether or not Prentice & Weissinger have any other available means to cover their losses by Stivers except this paper.

Answer. I know of no other. There were other notes passed to them by Stivers, but my attention was particularly directed to this note as a note which would be good. The other notes availed nothing.

By same. Are you or not acquainted with the general character of James Hamilton Johnson?

Ans. I am.

By same. From your knowledge of his general character, would you or not believe him on oath in a court of justice?

Answer. I would not.

By deft. Please state the time and amounts paid by Prentice & Weissinger for Stivers as his endorsers.

Answer. I cannot state precisely as to either time or amount. The note was passed to them, I think, in 1839.

By same. How do you know that the other notes of which you speak above availed nothing?

Answer. I know it only from the statements of Mr. Weissinger.

Answer objected to by defendant's counsel.

By same. What do you mean by general character?

Answer. I mean what others have said in regard to a man; what he has been guilty of, &c.

By same. How many persons have you ever heard speak of James Hamilton Johnson; and who were they?

Answer. I can't say how many, but I have heard a number; it was a general talk; his character seemed to be generally understood; I can't say who; I am like Mr. Smith, I have heard so many.

By same. Please state any person who you have heard speak of Mr. Jas. Hamilton Johnson?

Answer. I heard Mr. E. V. Godwin, (here to day;) I do not recollect particularly of any other person.

By same. What did you ever hear any person say about Johnson?

Answer. I heard that he has sold lands to which he had no title, and received the money for them; that he had purchased goods in the East, and run them to St. Louis, and sold them at auction, without accounting for them.

By same. Who did you hear make the above statements?

Answer. Mr. Wilder, (a druggist in this city,) so far as the goods were concerned; I do not recollect who told me the other.

By same. Did you ever hear anything else about Mr. Johnson?

Answer. I have heard a good deal which I can't recollect now; my mind was made up about him at the time, and has not changed since.

By same. Have you any personal acquaintance with Johnson; and have you ever known him sworn in any judicial proceeding?

Answer. I was acquainted with him; I have never known him to be sworn in any case. I only know him in the way of business.

By same. Are you or not in the employment of Prentice & Weissinger?

Answer. I am not. And further says not

J. ANTHONY.

COMMONWEALTH OF KENTUCKY, *Louisville chancery court, sct:*

Before the honorable Geo. M. Bibb, late judge of the Louisville chancery court, at the court room thereof, in the city of Louisville, on the 6th day of October, 1842.

GEORGE D. PRENTICE & GEO. W. WEISSINGER, under the firm of Prentice & Weissinger, complainants,
against
JOHN STIVERS & JOHN THOMAS, defendants.

And JOHN THOMAS, complainant,
against
GEORGE D. PRENTICE, & GEORGE W. WEISSINGER, & JOHN STIVERS, defendants. } On cross bill.

Be it remembered, that heretofore, to wit, on the 8th day of May, 1840, came the complainants, by their counsel, and filed in the clerk's office of the court aforesaid the following bill of complaint against the defendants, to wit:

To the honorable George M. Bibb, judge of the Louisville chancery court, humbly complaining, sheweth to your honor your orators, George D. Prentice and George W. Weissinger, under the firm of Prentice & Weissinger:

They allege and charge, that, on the 5th day of October, 1839, your orators, and one John Thomas, of the city of Louisville, as sureties, and John Stivers as principal, executed a note to the president, directors, and company of the Bank of Louisville, for the sum of $990, payable four months after date, which note your orators were, to save their credit, compelled to pay, and did pay, to the said bank; and the said note is annexed as part of this bill. Your orators allege and charge, that the said John Stivers, as they have heard and believe, is insolvent, and unable to pay any part of the *account* of said note so paid by your orators; and the said Thomas refuses, as co-surety with your orators, to contribute to pay the one-half of said note. In tender consideration whereof, and as your orators are entitled to aid from a court of equity which has jurisdiction to compel contribution between co-sureties; to the end, therefore, that the said John Stivers and John

Thomas may be made defendants to this bill, and answer the same, that your honor will decree that the said Stivers pay to your orators the said sum of $990, with interest thereon from 5th January, 1840; and, in case the same be not so paid by the said Stivers, that your honor will decree that the said John Thomas, as co-surety, pay to your orators, for contribution, the sum of $495, the one-half of the said sum, together with interest thereon from the 5th January, 1840, and that your honor will make such other or further decree in this case which the principles of equity may require. May it please, &c.

BROWN & COCKSILL,
For complainants.

Which note is in these words and figures, to wit:

$990. LOUISVILLE, KY., *Oct'r* 5, 1839.

Four months after date we, John Stivers, principal, and Prentice & Weissinger, and John Thomas, sureties, promise to pay, jointly and severally, to the president, directors, and company of the Bank of Louisville, or order, the sum of nine hundred and ninety dollars, value received, negotiable and payable at their office of discount and deposite.

$1,100. Due Sept. 28—1 Oct.

JOHN STIVERS,
PRENTICE & WEISSINGER,
JOHN THOMAS.

Endorsed.—Rec'd the amount of the within note of Prentice & Weissinger, Feb. 8, 1840, for Bank of Louisville.

H. POWERS, *Teller.*

Whereupon the following subpœna issued, to wit:

The Commonwealth of Kentucky, to the marshal of the Louisville chancery court, greeting:

We command you to summon John Thomas and John Stivers, to appear before the chancellor, in the city of Louisville, on the 4th Monday of May inst., to answer a bill in chancery exhibited against them by Prentice & Weissinger; and this they are cautioned not to omit, under the penalty and warning hereby given, that unless they shall appear and answer the said bill within thirty days from the day of the service hereof, the complainants may proceed against such defaulter to file interrogatories and take proof of the matters of the said bill, or may have an attachment to compel an answer, or at their election may take the said bill for confessed, and the cause will be tried without further warning; of all of which you will give notice to the defendant to take heed, and that you have then and there this writ, with your due return endorsed.

Teste, Charles J. Clarke, clerk of our said court, this 9th day of May, 1840, and in the 48th year of the commonwealth.

CH. J. CLARKE.

Upon which the marshal made the following return, to wit:

Executed on John Thomas the 20th, and on John Stivers the 22d May, 1840. Copies delivered.

WM. N. CLARKE, *D.*,
For W. A. COCKE, *M. L. C. C.*

At a court held for the *court* aforesaid, on the 16th of June, 1840, came the defendant John Thomas, by his counsel, and filed his separate answer herein, which he makes a cross bill against the complainants and his co-defendant, John Stivers, and process is awarded him thereon, &c.

Which answer is in these words and figures, to wit:

The separate answer of John Thomas, to the bill of Prentice & Weissinger, filed in the Louisville chancery court against him and John Stivers.

This defendant, saving and reserving to himself all and all manner of exceptions to said bill of complaint, for answer to so much thereof as he is advised it is material for him to answer to, doth say, that it is true he is with complainants joint security for the debt of $990, set out in said bill. He admits that the debt was due at the time specified, and to the institution set out, and it may be true that complainants have paid the debt, or in some way assumed the responsibility. But this defendant cannot admit that he is bound for any part of said debt, for he has been informed, believes that information, and therefore charges the fact to be, that the complainants and John Stivers, for years past, until within a year or two ago, were mutual endorsers for one another; that they were in the constant habit of lending and borrowing the one to and of the other; that when Stivers was about to fail, before, at the time of his failure, and perhaps afterwards, the complainants were liable for him upon endorsements and written obligations to various persons, individual and corporate, to a considerable extent and large amount; that, for the purpose of indemnifying them against losses on account of said liabilities, they exacted of said Stivers such indemnities as he could control; and this defendant avers, that said Stivers did furnish to them, and place in their hands, and subject to their control, lands, bills, drafts, promissory notes, deeds, and perhaps other valuables, to an amount sufficient at any rate to cover all their liabilities for him, and greatly more. But this defendant cannot specify the particulars with sufficient identity to set them out herein, but he reiterates the averment that they have received them, and now have them, or have in some way used them. And, in order that this honorable court may be the better enabled to pronounce a just and proper decision in this case, this defendant prays that this answer may be made and considered a cross bill against the said Prentice & Weissinger, and against the said John Stivers, and that they may be compelled to answer on oath to the charges herein contained. And that the said Prentice and Weissinger may be compelled to exhibit in this court a just, and true, and faithful account of their liabilities for said Stivers, specifying the manner in

which their responsibility for him occurred in each, setting out the amount of cash, to whom due, when payable, &c. And that they be compelled to file and exhibit in this honorable court the indemnities which they have received from the said John Stivers, whether of real or personal property; that they exhibit all and every deed or deeds, bill or bills, draft or drafts, or other writing obligatory, of any and every nature or description which they now have or may have had, and if any which they may have had be not now in their possession, that they may account for its or their absence. He prays that said John Stivers be compelled to file in this honorable court a just, true, and faithful account of each, every, and all indemnities which he has given to and made for said complainants, whether the same be of real estate or personal property, whether of bonds, bills, notes, deeds, drafts, checks, or other writings obligatory; and upon a final hearing of this suit, this defendant prays that complainants' bill, as to him, may be dismissed (if it shall be found that said complainants have been secured by said Stivers) with costs; and as in duty bound he will ever pray, &c.

DAGEN, WOOD & RAUSSEAU, *P. D.*

John Thomas states that the facts set out in the foregoing answer and cross bill are true, as he verily believes.

JOHN THOMAS.

JEFFERSON COUNTY, *Set:*

Subscribed and sworn to before me.

SAMUEL DICKINSON, *J. P. J. C.*

JUNE 15, 1840.

Whereupon the following subpœna issued, to wit:

"The Commonwealth of Kentucky, to the marshal of the Louisville chancery court, greeting:

We command you to summon John Stivers, and Prentice & Weissinger, to appear before the chancellor, in the city of Louisville, on the second Monday of July next, to answer a cross bill in chancery exhibited against them by John Thomas; and this they are cautioned not to omit, under the penalty and warning hereby given, that unless they shall appear and answer the said bill within thirty days from the day of the service hereof, the complainant may proceed against such defaulters to file interrogatories and to take proof of the matters of the said bill, or may have an attachment to compel an answer, or at his election may take the said bill for confessed, and the cause will be tried without further warning, of all of which you will give notice to the defendant to take heed; and that you have then and there this writ, with your due return endorsed.

Test, Charles J. Clarke, clerk of our said court, this 20th day of June, 1840, and in the 49th year of the commonwealth.

CH. J. CLARKE."

Upon which the marshal made the following return, to wit:

Executed on Stivers the 24th, and on Weissinger the 27th June, and on Prentice the 3d July, 1840; copies delivered.

T. M. TUNSTALL, *D.*,
For W. A. COCKE, *M. L. C. C.*

And at a court held as aforesaid, the 15th of June, 1841, came the cross complainant Thomas, by his counsel, and it appearing to the court that the subpœna in said Thomas' cross bill has been served on the defendants thereto, George D. Prentice, George W. Weissinger, and John Stivers, more than thirty days, and they having failed to appear and answer agreeable to law, and the rules of this court, it is therefore, on motion of said cross complainant, ordered that said Prentice & Weissinger, and Stivers, answer said cross bill on or before Tuesday the 29th instant, or then appear here and shew cause, if any they can, why they shall not be attached for a contempt offered this court in disregarding its process and authority. They being first served with a copy of this rule.

Upon a copy of the foregoing rule the marshal made the following return, to wit:

Executed the 28th June, 1841, and copies delivered.

J. B. COCKE, *D. M.*,
For W. A. COCKE, *M. L. C. C.*

And at a court held as aforesaid, on the 29th of June, 1841, came the defendant George W. Weissinger, by his counsel, and filed his separate answer to the cross bill herein. Whereupon it is ordered that the rule granted herein against him be, and the same is hereby, set aside. Which answer is in these words and figures, to wit:

The separate answer of George W. Weissinger to a bill exhibited against him in this honorable court by John Thomas.

This defendant, saving and excepting, &c., for answer to the said bill, says, that the firm of Prentice & Weissinger, as the securities of the defendant Stivers, has paid for him the following amounts:

Note payable to W. & C. Fellows. Due June 28th, 1839, for - - -	$855 00
One July 16, 1839. A note due to the No. Bank of Kentucky - - -	450 00
Sept. 3, 1839. Five notes payable to Bank of Kentucky, with interest to date	2950 20
Oct. 12, 1839. Paid Call on his note, Bank of Louisville - - - -	131 00
Oct. 25, 1839. N. Arthurs & Sons, acceptance and costs - - - -	1480 66
Nov. 8, 1839. His note to Bank of Louisville - - - - - -	990 00
Oct. 27, 1839. Allen & Merrick's note, interest and costs - - - -	1126 40
Balance due on sundry notes of Stivers for borrowed money, dated in April and May, 1839 - - - - - - - - - - - - -	3012 00
Amount paid in 1841, to perfect his title to a house and lot in Mississippi -	822 50
Responsible on another note of Allen & Merrick's, for - - - -	1100 00
Or something over, now in suit against us - - - - - - - -	12,917 82
This does not include debts on accounts and costs to the amount of some $100	
Paid on the above - - - - - - - - -	2688 43
	$10,229 39

On the other hand, the firm of Prentice & Weissinger have received securities to a large amount, but this defendant entertains but faint hope that any thing like the amount they have paid, and are responsible for, will ever be realized. The sureties are as follows:

One note of W. W. Page, of Madison - - - - - $4500 00

On this note, Page gave notice of an offset. He has been sued, but makes a *re*fense. It is very doubtful whether a judgment will be obtained, and if it is, whether any thing can ever be made. Page has brought a bill in this court against this defendant to force him to deliver it back to him, on the ground that he has paid it.

An acceptance for - - - - - - - - - - - - - - - Of C. L. Ramsey and J. F. Conover, of Cincinnati. This has been in the hands of a lawyer for two and a half years, and though it may ultimately be made, it is doubtful, is defended, and judgment has not been obtained; one of the parties is reputed to be utterly insolvent, and the other stands doubtful.	$659 78
One note for - - - - - - - - - - - - - - - - On P. Zane. Prentice & Weissinger have received notice that this note will be defended on the ground of no consideration. Due in November, 1841	5437 50
Draft endorsed by L. R. Page, for, as near as can be recollected - - - This draft has been sued—no judgment—defended.	4300 00
Balance of a draft drawn by H. & F. Nisbett & Co. - - - - - - Of this it is doubtful whether it will be paid.	188 13
A debt against Petigrew who died insolvent at Natchez. The commissioners of insolvency have reported the amount due with interest at - - - -	1293 27

On this they report a dividend of only 28 per cent., which dividend has not yet been made. An order was given by said Stivers on his lawyer in Natchez for the proceeds of certain drafts of Bullard & Co. Though inquiry has been instituted, and the debt ascertained to be altogether hopeless. In Grand Gulf one frame house has been transferred to Prentice & Weissinger, which this defendant believes has been rented for $300, and which, when in Grand Gulf, he thinks he could not have sold for $1500.

The sum of something near $500 has been attached in the hands of A. Aldrich, as due to N. Arthur & Sons, as this defendant understands; and two years ago, when he heard from his lawyers in St. Louis, there was a probability of its being made.

This defendant verily believes that a sufficient sum to indemnify said Prentice & Weissinger on account of said Stivers will never be realized, and he and they are ready and willing to transfer all said securities and claims to the said complainant Thomas, provided the claimant will give to the said Prentice & Weissinger eighty per cent. of the amount paid by said firm for said Stivers, and of the amounts they may hereafter be compelled to pay, or give security to pay the same in a reasonable time for said Stivers. This defendant finds, upon again overhauling the papers placed in the hands of Prentice & Weissinger, a deed from one Samuel Johnston to Samuel Stivers to certain lands in Ripley county, Missouri, with power of attorney to John Stivers to sell the

same ; which power has not been recorded. These with the other securities he will transfer to said complainant, provided said complainant will pay to Prentice & Weissinger the 80 per cent. as above, or secure it to them. These are all the claims or securities of any description ever transferred by Stivers to said Prentice & Weissinger, or either of them, except some that have been realized and are credited as money received in the above statement. This defendant denies that said Prentice & Weissinger ought to be delayed in obtaining contribution from said complainant for his just responsibility on said note. He is advised that it is not equitable that the whole burthen in the first instance should be thrown upon the shoulders of said Prentice & Weissinger, and they be compelled to wait an indefinite period for contribution from said complainant Thomas. This defendant believes that the proper course for said complainant to pursue is to make contribution, and then attach any surplus funds he may anticipate will be left in the hands of Prentice & Weissinger. This defendant states that all the business between said Prentice & Weissinger and said Stivers was transacted by him alone, and that his partner Prentice knows nothing further in regard to it than has been told him by *the* this defendant.

GEORGE W. WEISSINGER.

George W. Weissinger makes oath that the statements made in the foregoing answer as of his own known knowledge are true, and those made from information he believes to be true.

GEORGE W. WEISSINGER.

Subscribed and sworn to before me, June 28th, 1841.

G. J. JOHNSON, *J. P. J. C.*

And at a court held as aforesaid, on the 3d of July, 1841, came George D. Prentice, by his counsel, and filed his answer to the cross bill of John Thomas herein; which answer is in these words and figures, to wit:

Separate answer of George D. Prentice to bill exhibited against him in this honorable court by John Thomas.

This defendant for answer to said bill says, that the business of the firm of Prentice & Weissinger is conducted by his partner; and that he knows nothing further touching what said firm have paid for John Stivers, or the amount they are still responsible for on his account, or the securities the said Stivers has placed in their hands, than what he has heard from his said partner.

GEORGE D. PRENTICE.

COMMONWEALTH OF KENTUCKY,

Louisville chancery court, sct:

I, Charles J. Clarke, clerk of the court aforesaid, do hereby certify, that the preceding twelve pages (this included) contain a full and complete transcript of the record and proceedings had in the cause between the parties therein named to the period mentioned.

In testimony whereof, I have hereunto subscribed my name and caused the seal of said court to be affixed, (of which I [SEAL.] am by law the keeper,) at my office in Louisville, the 6th day of October, 1842, and in the 51st year of the Commonwealth.

CH. J. CLARKE.

I, George M. Bibb, chancellor and sole judge of the Louisville chancery court, certify, that Charles J. Clarke was and is the clerk of the court and keeper of the records and seal; that his attestation aforegoing is in due form of law, and his said official certificate is entitled to full faith and credit.

Given under my hand, at Louisville, in the Commonwealth of Kentucky, on this 14th day of October, in the year of Christ 1842, and the 51st of the Commonwealth.

GEORGE M. BIBB.

Copy, teste: ALEX. T. LAIDLY, *Clerk.*

We further find, that the consideration of said note was fraudulent on the part of the payee, and such that the payee could not recover against the maker upon said note.

But we further find, that the plaintiffs had no notice of the fraudulent consideration of said note at or before the time the same was delivered to them as aforesaid.

And we find that the defendant, since the institution of this suit, has duly served the plaintiffs with a notice in the following words, to wit:

An action of debt, in the district court of the United States for the western district of Virginia, between

PRENTICE & WEISSINGER, plaintiffs,
and
PLATOFF ZANE, defendant.

The defendant in this suit will offer evidence to show, and will insist at the trial, that the note described in the declaration was obtained from him, said defendant, by the payee thereof, by means of misrepresentation and fraud, and without any value having been received therefor by said defendant, and will require the plaintiffs to prove at the trial the consideration, if any, paid by them, or the previous holder or holders thereof, for the same, and the time and manner in which they became possessed of said note.

Very respectfully, &c.,

PLATOFF ZANE,
By JACOB & LAMB, *his attorneys.*

To Messrs. PRENTICE & WEISSINGER.

Due service of above admitted.

M. C. GOOD, *Attorney for Plaintiffs.*

We further find the statute of Pennsylvania in force within that State at the time of the execution of said note, and the endorsement thereof and delivery of the same to the plaintiffs as aforesaid, in these words:

"Act of 27th February, 1797—4 Dallas, p. 102, 3 Smith, p. 278.

An act to devise a particular form of promissory notes not liable to any plea of defalcation or set-off.

6. SEC. 1. All notes in writing, commonly called promissory notes, bearing date in the city or county of Philadelphia, whereby any person or persons, bodies politic or corporate, or copartnership in trade, shall promise to pay, or cause to be paid, to any other person or persons, bodies politic or corporate, or copartnership in trade, and to the order of the payee for value in account, or for value received, and in the body of which the words "without defalcation" or "without set-off" shall be inserted, shall be held by the indorsees discharged from any claim of defalcation or set-off by the drawers or indorsers thereof; and the indorsees shall be entitled to recover against the drawer and indorsers such sums as, on the face of the said notes, or by indorsements thereon, shall appear to be due: Provided, always, that in every action brought by the holder of any such note, whether against the drawer or indorsers, the defendant may set off and defalk so far as the plaintiffs shall be justly indebted to him in account by bonds, specialty, or otherwise.

(SEC. 8, S. and R. 481, and posted notes.)

A copy from a copy filed in my office.

Teste: ALEXANDER T. LAIDLEY, *Clerk.*"

And if the law be for the plaintiffs, then we find for them the sum of $5,437 50, the debt in the declaration mentioned, with interest thereon at the rate of six per cent. per annum from the 1st day of December, 1841, till paid. But if the law be for the defendant, then we find for the defendant.

T. W. HARRISON.

And because the court will consider of what judgment should be rendered upon the verdict aforesaid, time is taken until to-morrow.

Memorandum. Upon the trial of this cause the parties, by their attorneys, filed a written agreement in the words following, to wit: "And the parties agree that the court, in deciding upon the foregoing verdict, shall look to and regard the decisions of the courts of the State of Pennsylvania, as found in the several printed volumes of the reports thereof, to avail as much as if the same were found by said verdict, and to have such weight as in the judgment of the court they ought to have; and the parties further agree to waive all objections to said verdict on account of its finding, in part evidence and not fact. And that the court, in deciding thereupon, may make all just inferences and conclusions of fact and law from the evidence and facts therein stated, and the decisions aforesaid, which, in the opinion of the court, a jury ought to draw therefrom if the same were submitted to them upon the trial of this cause; and that this agreement is to be made part of the record in this suit.

M. C. GOOD, *Attorney for plaintiffs.*
JACOB & LAMB, *Attorneys for defendant.*

Which agreement is ordered to be made a part of the record in this suit.

And at another day, to wit, at a district court of the United States, continued and held for the western district of Virginia as aforesaid, on Friday, the 10th day of April, 1846, came the parties by their attorneys; and thereupon, the cause being further argued by counsel, the same is adjourned till to-morrow morning, at 10 o'clock, for further argument therein, until which time the said cause is continued.

And at another day, to wit, at a district court of the United States, continued and held for the western district of Virginia as aforesaid, on Saturday, the 11th day of April, 1846, at the city of Wheeling aforesaid, came the parties by their attorneys, and the argument in this cause being concluded, time is taken until the next term to consider of what judgment shall be rendered in the premises, until which time this cause is continued.

And now at this day, to wit, at a district court of the United States, held for the western district of Virginia, at the city of Wheeling, on the same day and year first herein mentioned, to wit, on Wednesday, the ninth day of September, 1846, came the parties by their attorneys, and thereupon, the matters of law arising upon the special verdict in the cause being argued at a former term of this court, and the court having maturely considered thereof, it seems that the law is for the defendant. Therefore, it is considered by the court, that the plaintiffs take nothing by their bill, but for their false clamor be in mercy, &c. And that the defendant go thereof without day, and recover against the plaintiffs his costs by him about his defence in this behalf expended.

STATE OF VIRGINIA, *Ohio county, to wit:*

I, Erasmus Stribling, clerk of the district court of the United States for the western district of Virginia, at Wheeling, do hereby certify, that the foregoing is a true transcript from the records and judicial proceedings of the said court, and contains the record and proceedings in a certain action of debt lately depending in said court, between Prentiss & Weissinger, plaintiffs, and Platoff Zane, defendant, with all things touching the same as fully and wholly as they exist among the records and proceedings of the court aforesaid.

In testimony whereof, I hereto set my hand, and annex the seal of the said court, this 27th day of November, anno domi-
[L. S.] ni 1846, and in the 71st year of the independence of the United States of America.

ERASMUS STRIBLING.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the district court of the United States for the western district of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between George D. Prentice and George W. Weissinger, copartners, doing business under the style and firm of Prentice & Weissinger, plain-

tiffs, and Platoff Zane, defendant, a manifest error hath happened, to the great damage of the said Prentice and Weissinger, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-six.

(Signed,) WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by (Signed,) J. CATRON,
Asso. Jus., S. C. U. S.

The United States of America to Platoff Zane, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of November next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the western district of Virginia, wherein George D. Prentice and George W. Weissinger, copartners, doing business under the style and firm of Prentice and Weissinger, plaintiffs in error, and you are defendant in error; to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, associate justice of the Supreme Court of the United States, this third day of February, in the year of our Lord one thousand eight hundred and forty-seven.

J. CATRON, *Asso. Jus., S. C. U. S.*

CITY OF WHEELING, *Ohio county, Va., ss:*

On this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and forty-seven, personally appeared Thomas P. Shallcross, deputy U. S. marshal, before me, the subscriber, an alderman of said city, and ex officio a justice of the peace for said county, and makes oath that he delivered a true copy of the within citation to William W. Shriver, administrator of the estate of Platoff Zane, deceased, this day.

Witness my hand and seal this twenty-fourth day of February, 1847.

GEORGE DULTY, [SEAL.]
Alderman.

Know all men by these presents, that I, John J. Crittenden, am held and firmly bound unto Platoff Zane in the full and just sum of two hundred dollars, to be paid to the said Platoff Zane, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, by these presents. Sealed with my seal, and dated this third day of February, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas, lately, at a district court of the United States for the western district of Virginia, in a suit depending in said court, between George D. Prentice and George W. Weissinger, copartners, doing business under the style and firm of Prentice & Weissinger, plaintiffs, and the said Platoff Zane, defendant, judgment was rendered against the said Prentice and Weissinger; and the said Prentice and Weissinger having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Platoff Zane, citing and admonishing to be and appear at a Supreme court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Prentice and Weissinger shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

J. J. CRITTENDEN. [SEAL.]

Sealed and delivered in presence of—

WM. THOS. CARROLL. [SEAL.]

Allowed by

J. CATRON, [SEAL.]
Asso. Jus., S. C. U. S.

Filed, February 27, 1847.

(36) Dec. 1847. No II Vol III

Wheeler Bennetts Executors

The U. S. Price

Wilson Simpson

La Roche & Wife Jones & Wife

Chesapeake & Del. Canal Co

vs

Perrine

Benner Porter

Mason Pearson

Thacker Baldwin

Brabston Gibson

Beckwith Haldeman

Davis Police Jury

Bridge Co H. & N. H. R. R.

Humphreys Leggett

Smythe Att. of Arkansas

Boswell Dickinson

U. S Briggs

Beatty Ross

Hood Douseman

II

Gaines	Nicholson
Pease	1st Municipality
Barrow	Read
U. S.	Hill
Taylor	Merchants F. Ins. Co.
Trustees	Trustees et al.

(J. D. O'Brien)

No. 2. Vol. 3. 1363.

SUPREME COURT OF THE UNITED STATES.

No. .

WILLIAM WHEELER, COMPLAINANT & APPELLANT,

VS.

CHARLES BENNETT'S EXECUTORS ET AL.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR ALEXANDRIA, D. C.

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J. & G. S. Gideon, printers.

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the District of Columbia, for the county of Alexandria, at the court-house in the town of Alexandria, the 17th day of October, 1846.

Title.

WILLIAM WHEELER, complainant,

against

HUGH SMITH and Phineas Janney, executors of Chas. Bennett, deceased, and surviving trustees under his will, and Molly E. Taylor, executrix, and Henry Daingerfield and Phineas Janney, executors of Robert I. Taylor, deceased, who was an executor and trustee under the same will, Hugh C. Smith, executor of the same Charles Bennett, and the Common Council of Alexandria, defendants. } In chancery.

Be it remembered, that heretofore, to wit, at the rules held in the clerk's office of the said court for the month of May, 1844, came the complainant, by John R. Cooke, esq., his solicitor, and filed his bill against the said defendants, which is in the words and figures following:

Bill.

To the honorable the circuit court of the District of Columbia, in the county of Alexandria, on the chancery side thereof.

William Wheeler, an inhabitant of the State of Pennsylvania, respectfully complaining, sheweth, that he is next of kin and heir at law to Charles Bennett, a wealthy merchant, late of Alexandria, who died at a very advanced age in the month of April, 1839. Mr. Bennett had never been married; and he left neither father nor mother, nor brothers nor sisters, nor any descendant of any brother or sister, save only your orator, who was the only surviving child and descendant of Mrs. Wheeler, the only sister of the deceased.

Your orator's father, who resided in Charles county, Maryland, on a small patrimonial estate, died in 1818, leaving a widow, the only sister of Charles Bennett, as before stated, an only son, (your orator,) and two daughters. One of them, Mary E. Wheeler, intermarried with Francis E. Rozer; the other, Henrietta V. Wheeler, with John M. Lisle; and both died without children before the decease of their uncle.

Your orator was eleven years old when his father died, and two years after he was in effect adopted by his uncle, who placed him at the Catholic seminary in Georgetown. At the age of about nineteen he was taken from school, and resided with his uncle, in Alexandria, about eighteen months. At this period he was treated with great kindness by

his kinsman, and was regarded as his presumptive heir. One of the evidences of his uncle's affection was the conveyance by deed to your orator, before he came of age, of a house and lot in Alexandria of the estimated value of $5,000. This property, however, was soon after reconveyed by your orator to his uncle at his request, and without valuable consideration. This withdrawal of his bounty, however, did not proceed from any diminution of his uncle's affection or confidence, so far as your orator could perceive. It might have been the mere whim of the moment, or connected, perhaps, with some business arrangement which he had in view. Your orator was long after, as well as long before, regarded as his uncle's "heir," and was early taught to consider himself a man of fortune in expectancy. When he was only a little above twenty years of age, he was sent by his uncle to take possession of his patrimonial estate in Charles county, and was left to act for himself.

In this new position of a country gentleman, scarce one and twenty years old, of small fortune and large expectations, it happened, as might well have been expected, that his expenditures greatly exceeded his income. The usual incidents to such a position were not wanting in his case. He was courted and caressed by gay and dissipated young men, whose taste for pleasure exceeded their means of purchasing it, and by the leeches whose vocation it is to enable needy heirs to expend their estates before they have reduced them into possession.

The result was, that your orator became embarrassed in his circumstances, and at the age of four-and-twenty, found himself unable to pay his debts without selling his patrimony.

It may well be supposed, and so it was, that his uncle, who had amassed a considerable fortune by systematic economy, as well as industry, was much vexed and irritated at the extravagance of your orator, and the bad habits he had unfortunately contracted; for, harrassed with pecuniary difficulties, he had at this time sunk into habitual dissipation. At this crisis in his affairs his uncle interposed, took from him, without account or price named, a deed of conveyance of his whole property, real and personal, which was more than sufficient to pay his debts, discharged the whole of the debts, and agreed to make an annual allowance for his support.

After this arrangement had been made your orator proceeded to Camden, in New Jersey, and attempted to study law, but with little success, in consequence of his inability to shake off the bad habits he had contracted. After remaining at Camden about a year he removed, in 1832, to Chester county in Pennsylvania, where he has ever since resided. It was at this period he was enabled to reform his habits, and he has never since deviated from the course of strict temperance which he then commenced. He afterwards studied law in Chester county, and was admitted to the bar, but he never practised. It may be proper to mention, that while he was residing, as a student of law, in West Chester, he was visited by his uncle, who seemed to be much gratified at his course of life. Some time after that he was sent for by his uncle to vis-

it him at a watering place in Chester county, and met with a cordial reception. But afterwards, in 1838, when at the earnest and repeated solicitations of some of his friends he visited his uncle, without invitation, at Alexandria, he was received with great coldness; the conduct and demeanor of his uncle on that occasion impressed on him a strong conviction that his mind was disordered. That such an impression was made by Mr. Bennett's conduct and demeanor on several of his friends, who had no interest in the question of his sanity, at various times befor the execution of the testamentary papers hereinafter mentioned, is a fact susceptible of the most ample proof; but it is a point not relied on in this controversy, and is mentioned merely as a fact belonging to the narrative which your orator has thought it advisable to prefix to his bill.

Some time before the first of January, 1835, (the date of the will hereinafter mentioned,) Charles Bennett conveyed your orator's land in Maryland, augmented by a small purchase of land adjacent to John M. Lisle and Francis E. Rozer, in trust to apply the rents and profits to your orator's support. He moreover placed in the hands of Mr. Lisle funds to the amount of $20,000, (twenty thousand dollars,) in trust to invest the same in such a manner that your orator, while he received the interest or dividends arising from the fund, could never encroach on the principal amount. This fund was invested by Mr. Lisle, as trustee, in Pennsylvania 5 per cent. State bonds at par, and it continued to produce to your orator $1000 per annum, till the payment of the interest was suspended about two years ago.

It is time now to advert to the testamentary dispositions made by Mr. Bennett of his estate. From the 15th February, 1834, (when he executed a brief memorandum, indicating that he meant to appoint Hugh Smith, Robert I. Taylor, and Phineas Janney his executors, and directing that no security should be required of his executors,) till the 18th of January, 1838, inclusive, Mr. Bennett executed a series of testamentary papers, all of which were admitted to probate on the 4th of May, 1839, under circumstances hereinafter to be mentioned. A duly certified copy of all these papers is herewith exhibited and made a part of this bill.

It will be perceived that he commences his will, dated Jan. 1, 1835, (paper A,) by giving $19,250, in pecuniary legacies to his friends or their children, and a specific legacy of furniture, &c., to Francis E. Rozer.

The 15th item or clause relates to your orator, and is as follows:

"15. To Francis E. Rozer and John M. Lisle I leave the direction of all relating to William Wheeler. I have vested with the latter the funds intended for his use, in consequence of being compelled to take possession of his estate and blend it with my own. He is at liberty, and is enjoined, whenever he considers said William may be safely trusted, to give him possession of all left for his use. The landed estate I wish preserved, if it can be; it stands deeded in the name of Francis E. Rozer and John M. Lisle, and is under the management of John I. Jenkins, in Charles county, Maryland; having come through William's family 200 years ago, I should regret it not continuing."

In the 19th item or clause he says:

"My belief is that James R. Riddle, if he has his health, understands my concerns better than any one else; I would therefore recommend my executors employing him to wind them up as speedily as prudence permits; he has my fullest confidence."

It may be as well to mention here that the testator gives to this gentleman, in one or other of the testamentary papers, legacies to the amount of $4,000.

The 20th item or clause runs thus:

"The residue of my estate is left in trust of Hugh Smith, Robert I. Taylor, and Phineas Janney, for such purposes as they consider promise to be most beneficial to the town and trade of Alexandria; if any difficulty occurs in construction as to any of my bequests, R. I. Taylor is specially charged to give said construction."

"Hugh Smith, Robert I. Taylor, and Phineas Janney are solicited to act as my executors; and in case either should die, the following gentlemen in the order named to be substituted: Hugh C. Smith, Francis E. Rozer, and either of my surviving executors, to name one if one should be wanted." And so ends the will.

On another paper, marked in the orphan's court B, and headed "codicil to my will," there are four distinct testamentary acts, each signed and sealed by the testator.

The first act increases a legacy of $1,500, before given to J. R. Riddle, to $2,000, and suggests that he should, while engaged in winding up the testator's affairs, receive the same compensation which the testator then allowed him for his services, viz., $450 per annum, and a dwelling-house.

The first (which is without date) and the second (which is dated April 18th, 1835) give sundry legacies to the amount (besides Mr. Riddle's) of $2,250.

The third testamentary act on paper B is without date, and is in these words:

"Now in the enclosure I leave the residue of my estate, after paying all bequests and appropriations, to some disposition thereof which my executors may consider as promising most to benefit the town and trade of Alexandria. Now I leave the same entirely to their disposition of it, in such manner as appears to them promises to yield the greatest good."

The fourth testamentary act on paper B, which is also without date, runs as follows:

"Now I have not made provision in case of accident to John M. Lisle, with whom I vested the funds for William Wheeler, conceiving (written in the office copy "concerning") the amount as much as he could want for use; now if any mischance should happen thereto, Mr. Smith, Taylor, and Janney will take care and provide out of my estate, so that Wm. Wheeler does not suffer the want of the sum intended for him, or what they deem necessary under the circumstances."

The testamentary papers, marked in the orphan's court C, "Jan. 1,

1836," D, "12th December, 1836," E, "8th June, 1837," F, "12th December, 1837," and G, dated January 18th, 1838, contain sundry bequests, and modifications and revocations of bequests, which are of no importance in reference to the objects of this bill. Neither, indeed, is the last of the series (according to the arrangement of these papers made in the orphan's court) marked H, herein before mentioned; but its brevity and peculiarity entitle it to a place here.

"Messrs. Hugh Smith, R. I. Taylor, and Phineas Janney. No security to be required of my executors; they have all the confidence I can have in men.

Feb'y 15th, 1834. A part of my will.

CHARLES BENNETT." [SEAL.]

At the time of his uncle's death, in April, 1839, your orator resided (as he does at present) in Chester county in Pennsylvania, in very cramped and straitened circumstances. It is true that the income settled upon him by his uncle was sufficient, with proper economy, to afford him a comfortable and independent subsistence. But he found it difficult, nay impracticable, to divest himself entirely of those expensive habits which he had formed while he was presumptive heir and expectant of great wealth; for Mr. Bennett's wealth, as is usual in such cases, was considerably overrated.

Whatever was the cause of his embarrassments, however, the fact was as he has stated, and is susceptible of the most ample proof. Whether the fact of his necessitous condition had come to the knowledge of his uncle's executors, through Mr. James R. Riddle, of Alexandria, with whom your orator kept up a correspondence, he does not know. He thinks it more than probable; and he charges such knowledge, so far as it is necessary to make such charge, in order to let in evidence of the fact.

Such was his situation when, about the end of April, 1839, he received a letter from Mr. Riddle, written at the instance of the executors, informing him that his uncle had died on the 24th of that month, that his will would be offered for probate in the orphan's court of Alexandria, on the 4th of May, and that the presence of your orator on that occasion, as next of kin and heir at law of the decedent, was desirable, or was necessary. He received by the same mail the Alexandria Gazette of April , in which it was stated that Mr. Bennett, having made provision for his immediate relations in his lifetime, had left a will, by which, after giving a number of legacies to his friends, &c., he had devised the residue of his property to the town of Alexandria. The letter of Mr. Riddle is lost or destroyed, and your orator cannot recollect its precise date, or the precise day on which it was received; but he well recollects that the notice given to him was very short, and that the difficulty of reaching Alexandria, on so short a notice, was enhanced by his moneyless condition, and the necessity of borrowing $50 to defray the expenses of the journey. With all the exertion he could make, it was noon on the second of May before he arrived at Alexandria.

He quickly communicated to Mr. Riddle, who handed to him on his arrival a copy of his uncle's will, his determination to contest the validity of the residuary devise. In an interview which he had, on the same afternoon, with Hugh Smith, esq., one of the executors, that determination, which had been communicated to Mr. Smith by Mr. Riddle, was the subject of conversation. At that interview Mr. Smith manifested a kindly feeling towards your orator, and appeared to be almost nervously anxious that a law-suit should be avoided. He did not, however, express any fears about the result. On the contrary, he stated that the executors had consulted counsel, whose opinion was in favor of the validity of the whole will, and seemed to have entire confidence in the correctness of the opinion. But he intimated, delicately, that the executors entertained a friendly feeling for your orator, and were disposed to act liberally with him; and admitted that they greatly deprecated the delay which would attend a litigation. He spoke much and earnestly about the inevitable delay and vexation of a suit. He said that a smart and ingenious lawyer could pick a hole in almost any instrument of writing. That no doubt such an one could be found who would undertake your orator's case, and then the will would be thrown into chancery, where it would remain for years. Your orator remarked that, at that time, he was not able to fee a lawyer, but that he could obtain assistance from his friends. Mr. Smith proceeded to say that he thought a course might be taken by which expense and delay might both be avoided. He suggested, in short, that the executors were willing to pay a sum of money to your orator for a release of all claims on the estate, and proposed a conference between your orator and all three of the executors on the forenoon of Friday, the 3d of May, at the late residence of Mr. Bennett, which was accordingly appointed to take place.

The amount which the executors were disposed to give for a release was not specified at the preliminary interview; but your orator learned, from a credible source, after the release had been executed, and the will had been admitted to probate, that the executors had at that time, and before the arrival of your orator, determined to offer him ten thousand dollars, and no more. He also learned from the same source, and at the same time, that the executors, (or some one or more of them, your orator cannot recollect which,) had called upon him, (your orator's informant,) before your orator's arrival, to learn his character; and that (he or) they seemed to be impressed with the belief that your orator was of an easy disposition, and not over smart or intelligent, and that he would gladly accept their offers at once. Your orator's informant added, that to undeceive them he read to them parts of your orator's correspondence with him.

At the conference of May 3d, at which were present the three executors, Mr. Riddle, and your orator, and no other person, your orator very briefly stated in substance, that his opinion or impression was that the residuary devise in the will was void, and that he had determined to test its validity by legal proceedings. On the part of the executors, Mr. Taylor was the principal and almost the only spokesman.

He insisted much on sundry written opinions of counsel in favor of the legal validity of the residuary devise, which he offered to show to your orator. He conveyed to your orator's mind, (but by what language or phrases he cannot recollect,) the clear and distinct impression that there was but one opinion among the lawyers consulted on this question; or, in other words, that they were unanimous in favor of the legal validity of the residuary devise. But as Mr. Taylor had not stated that he concurred in opinion with the counsel whom the executors had consulted, and as your orator regarded him as counsel of the highest legal ability, he (your orator) asked him, without ceremony, what his opinion was on the subject.

His reply was, that your orator ought not to have asked his opinion; but as he had been asked, he would give it. The substance and effect of his opinion was, that the devise in question was a legal and valid disposition of the residue of the estate. When your orator, now greatly disheartened, intimated deferentially that he had taken up a contrary opinion, Mr. Taylor said that he admitted that in Pennsylvania such a devise would not be good; but that it was good under the old law of Virginia, as it existed at the time of the cession of the county of Alexandria by Virginia, which law was the law of the county of Alexandria up to the time of Mr. Bennett's death.

But while an undoubting confidence was expressed by the executors, through Mr. Taylor, in the ultimate result of any litigation about the validity of the residuary devise, they admitted, and accounted for their anxiety to obtain an immediate release of your orator's claim, by insisting on the great importance to the town of Alexandria of an *immediate* application of the residuary fund to the completion of the canal, more especially, and to other useful and important objects. To avoid the *delay* of a law suit, they were willing to pay for a release of your orator's claim, however untenable and desperate. Your orator does not mean here to quote the language of Mr. Taylor, but to state the impression made on his mind by the language used.

It were tedious to tell much more that was said at this conference. Suffice it to say, that Mr. Taylor was a man of commanding intellect; and that, *under the most favorable circumstances*, your orator would have been wholly unequal to the intellectual conflict in which he found himself involved with one so gifted, and for whom he entertained an habitual and profound respect. But having no distinct or settled views of the legal question thus suddenly forced upon him, or time to form any, fevered by a rapid journey, his spirits depressed by the recent death of his last kinsman, to whom he had been tenderly attached, and flurried and confused by the magnitude of the question he was called on to decide, and the necessity of deciding it at once, your orator felt himself wholly overpowered, and strongly inclined to succumb to the views so forcibly presented to him. And these views were moreover recommended to his favorable consideration by the offer, so tempting to a man in his situation, of a large sum of money without delay or further trouble.

In this state of mental ferment, your orator, scarcely knowing what to do or say next, asked the executors what sum they proposed to give him for a release. They answered that it was for *him* to say what he would be willing to take; and the conference closed with a request on the part of the executors, that your orator would consider the matter, and let them know his decision in the course of the day.

But how could he, in the time allowed him, give to the subject the consideration its importance deserved, or any consideration? His personal incompetency to decide the question, or even to consider the subject in so short a time, he has already stated truly and without exaggeration. He was so much flurried that his mind could not act. Why not, then, resort to learned and able counsel, having no personal interest in the question, for advice and direction? The answer is, that the executors, by the shortness of the notice which they had given him, or in other words, by appointing so early a day for the probate, had effectually precluded him from pursuing this obvious and only rational course. A brief reference to the facts of the case will shew conclusively the correctness of this assertion.

It was now past noon on the third of May, and your orator was given to understand that on the next day the will would and must be offered for probate. Counsel was, in the mean time, to be sought for in *Alexandria*, where the whole population was interested in sustaining the will, and where, without derogating from the professional merit of the rest of the bar, it may be said that the first jurist of the town was committed against him. And if it be conceded that good counsel could have been had in Alexandria, it is still perfectly obvious that he could not have had time to examine, and give an advised opinion on a question involving above one hundred thousand dollars; and, if not one of great difficulty, still one requiring a very great and deliberate consideration. No counsel would have taken on himself the responsibility of giving a final opinion on such a question in the time that was allowed to your orator for his decision. He was therefore compelled to decide, without the aid of counsel, whether he would make the legal validity or the legal invalidity of the devise the basis of his action; and being entirely in the dark, he concluded that the only safe course was to consider the devise valid, and take what he could get for a release. But he was required to name a sum, and *what* sum he should name and demand was the remaining question.

And here, again, such was the precipitation with which this important business was conducted, that he had no certain premises on which to act; for he had neglected to ask the executors, and they had not informed him, what would probably be the amount, after deducting legacies and expenses of administration, of the residuary interest which he was asked to surrender; so that, while he was apparently offered an *election* whether to go for the whole, or to take some definite amount in lieu of his chance of getting the whole, it was an election between a known quantity and an unknown quantity. That is to say, it was no election at all, but a mere proposition that he should *guess* what sum he

He insisted much on sundry written opinions of counsel in favor of the legal validity of the residuary devise, which he offered to show to your orator. He conveyed to your orator's mind, (but by what language or phrases he cannot recollect,) the clear and distinct impression that there was but one opinion among the lawyers consulted on this question; or, in other words, that they were unanimous in favor of the legal validity of the residuary devise. But as Mr. Taylor had not stated that he concurred in opinion with the counsel whom the executors had consulted, and as your orator regarded him as counsel of the highest legal ability, he (your orator) asked him, without ceremony, what his opinion was on the subject.

His reply was, that your orator ought not to have asked his opinion; but as he had been asked, he would give it. The substance and effect of his opinion was, that the devise in question was a legal and valid disposition of the residue of the estate. When your orator, now greatly disheartened, intimated deferentially that he had taken up a contrary opinion, Mr. Taylor said that he admitted that in Pennsylvania such a devise would not be good; but that it was good under the old law of Virginia, as it existed at the time of the cession of the county of Alexandria by Virginia, which law was the law of the county of Alexandria up to the time of Mr. Bennett's death.

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And here, again, such was the precipitation with which this important business was conducted, that he had no certain premises on which to act; for he had neglected to ask the executors, and they had not informed him, what would probably be the amount, after deducting legacies and expenses of administration, of the residuary interest which he was asked to surrender; so that, while he was apparently offered an *election* whether to go for the whole, or to take some definite amount in lieu of his chance of getting the whole, it was an election between a known quantity and an unknown quantity. That is to say, it was no election at all, but a mere proposition that he should *guess* what sum he

would be content to receive, or at what point he ought to take his stand, and refuse to fall lower in his demands. Under this *duress* of circumstances he made a guess, and informed the executors in the course of the day, that he would release his claim for $30,000. Their reply was an offer of $20,000, an answer to which was required on the following morning, the day of probate. In the morning of the following day, your orator called on Mr. Smith, and told him that "he would be better satisfied with $25,000." The executors agreed to give that sum, and so the matter ended.

The agreement between your orator and the executors was forthwith committed to writing and executed, that is to say, signed and sealed by the parties. A certified copy is herewith presented as a part of this bill.

It will be seen that it recites that your orator, in consideration of $25,000, and of a release of all claims which the deceased might have against him, had agreed "to release to the said executors all his claims in law or equity to the estate, real and personal, devised and bequeathed, or intended to be devised or bequeathed, by Charles Bennett, by his will, to be held and disposed of by the said executors in the manner in and by said will described; and that the said executors shall be at liberty, if any specification of the objects to which the residuary fund is to be applied be thought necessary, to apply the same to aid in finishing the Alexandria canal, either by a direct subscription to its stock, or by purchasing in the stock of the Alexandria corporation, issued, or to be issued, in payment of the subscription of the said corporation to the said canal, to the extinguishment of the debt of the corporation of Alexandria, to introduce into the town, for the use of the inhabitants, a supply of pure and wholesome water, and to subscribe to any railroad or other roads communicating with the said town, to any or all of the above purposes, in such way as the said executors or the survivors may think most conducive to the prosperity and welfare of the town," and concludes with formal covenants and releases, carrying out the said recited agreement. After the execution of this paper the sum of $5,000 was paid to your orator, in part of the $25,000, and the will was forthwith admitted to probate, and letters testamentary granted *granted* to the executors without opposition. The residue of the $25,000 was also afterwards paid to your orator.

A considerable time, some years indeed, elapsed before your orator entertained any idea of calling in question the validity of this arrangement and release. His confidence in Mr. Taylor had prevented him from consulting counsel, after the release was executed, in relation to the validity or invalidity of the residuary devise; he was willing to take it for granted that it was clearly valid. He was, therefore, somewhat startled, when, in the course of the discussions among professional men produced by Girard's will, he heard opinions attributed to a lawyer of high standing diametrically opposed to that expressed by Mr. Taylor. He consulted counsel on this point, and was advised that, on principles often adjudicated and clearly settled, the residuary devise in Charles Bennett's will was altogether void in law, frustrate and of no effect; or, if it had any legal effect, it was to create a resulting trust in favor of your

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orator. He was further advised, that, on the statement of facts herein before made, the release aforesaid, executed by your orator on the 4th of May, 1839, was void in equity, and no way binding on him as a release. Thus advised, he appeals to this honorable court for such relief as the facts herein before stated, when proved to the satisfaction of the court, will entitle him to receive at its hands.

Your orator has not been able, with all the aid he could derive from the inventory, &c., returned by the executors, and from the successive settlements made by those gentlemen with the orphan's court of the county of Alexandria, (copies of all which documents are herewith presented and made a part of this bill,) to discover either the amount of the residuum of his deceased uncle's estate, to which, as next of kin and heir at law, he conceives himself to be entitled, (tho' it seems clear enough that it exceeded $120,000 at the time of his death,) or the disposition which has been made of the same, or of such part thereof as has been collected or reduced into possession, or what real estate remains undisposed of. It would seem, on the face of these accounts, that some eighty-six, or perhaps eighty-seven, thousand dollars have been invested in six per cent. stocks of the Corporation of Alexandria, at what price your orator cannot discover; and that of twenty thousand dollars of like stock, held by the testator at the time of his decease, six thousand dollars have been paid to legatees, as by the will is directed, and fourteen thousand transferred to and held by the executors. And it is presumed that some arrangement has been made by the executors and trustees, under which these stocks, and the whole of the residuum, when ascertained, have been, or are to be, applied to some one or other of the purposes set forth in the release. It is to be presumed too, or at least your orator cherishes the hope, that if the executors and trustees have appropriated the residuum, or any part of it, as just stated, they have taken proper steps to save themselves, individually, from ultimate loss, in the event of your orator's success in this litigation. But, inasmuch as your orator has not been able to arrive at any certain conclusion that any part of said fund has been paid over or transferred to any corporation or natural person, or placed beyond the control of the said executors and trustees; and in as much as they had, in fact, no equitable right to make such transfer to any person but your orator himself; and in as much as your orator is not bound to follow the fund into whose soever hands the same may have passed, even if he knew into what hands it has passed, he is advised to make the surviving trustees, and present acting executors of the testator, and the executrix and executors of the deceased executor and trustee, and them only, defendants to this bill.

The deceased executor and trustee referred to is Robert I. Taylor, esq., late of Alexandria. He departed this life between the 21st of July and the 8th of October, 1840. By his last will and testament, which was admitted to probate on the 16th of October, 1840, he appointed his widow, Molly E. Taylor, his son-in-law, Henry Daingerfield, and his friend Phineas Janney, his executrix and executors, all of whom qualified as such when the will was admitted to probate. On the 8th of October, 1840, and in consequence of the decease of Mr

Taylor, Hugh C. Smith, one of the provisional and supplemental executors named in the will, qualified as executor of Charles Bennett.

To obviate all misapprehension, your orator deems it proper to state here distinctly, that he does not mean, in and by this bill of complaint, to call in question the validity of any part of the will of Charles Bennett, deceased, except the 20th item or clause in the body of the will, and the third testamentary act in the *in the* paper marked B, which said clauses contain the residuary devise so often mentioned; nor to call in question the validity of the conveyances and titles made by the said trustees, or the survivors, of and to the real estate of Charles Bennett, sold by them; nor to call in question the compensation allowed by the orphan's court to the executors and trustees; nor, lastly, to open up the settlements made by said executors with the orphan's court, except so far as errors may appear on the face of them, (if any such there be,) and except so far as it may be necessary to resolve the said accounts into their elements, so as to present one general and comprehensive account, shewing the true amount of the residue of the estate.

Your orator feels himself aggrieved by the actings and doings of the said executors and trustees, which are contrary to equity and good conscience, and manifestly tend to the injury and oppression of your orator; in tender consideration whereof, and for as much as your orator is without remedy at common law, and only and properly relievable by a court of equity; and to the end that Hugh Smith and Phineas Janney, as surviving trustees, expressly constituted by the will trustees, with Robert I. Taylor, deceased, of the residuum of the said Charles Bennett's estate, and also in their character of executors of the said Charles Bennett; and that Mrs. Molly E. Taylor, executrix, and Henry Daingerfield and Phineas Janney, executors, of Robert I. Taylor, deceased, who was trustee and executor jointly with Hugh Smith and Phineas Janney; and lastly, that Hugh C. Smith, who also qualified as executor of Charles Bennett on the 8th October, 1840, as executors may, in their respective characters just set forth, be made defendants to this bill, and may answer all and singular the allegations thereof, as fully as if here repeated in the shape of special interrogatories; and that the defendants, Janney and H. Smith, may especially answer and say, whether your orator has not truly stated what passed in the two conferences aforesaid, and if not, in what respect he has erroneously stated the same.

And that this honorable court may, by its decree, pronounce the devise made in trust to Hugh Smith, Robert I. Taylor, and Phineas Janney, in and by the 20th item or clause of the will, and the third testamentary act on the paper marked B, hereinbefore set forth, to be null and void; or if of any legal effect, as creating a resulting trust in favor of your orator as next of kin and heir at law of the testator; and may require the defendants to render such supplemental account of the estate committed to their charge as may be necessary, in order to enable this honorable court to make a decree against them for the amount due to your orator as next of kin and heir at law; and that this honorable court, in order to restore your orator to the full enjoyment of his legal and equitable rights,

as next of kin and heir at law, may decree the instrument of writing executed by him and by the said Hugh Smith, Robert I. Taylor, and Phineas Janney, on the 4th of May, 1839, purporting to be a mutual release, null and void.

And that your orator may have such other and further relief in the premises as to this honorable court shall seem just and right, on the facts hereinbefore stated, and to be proved.

May it please this honorable court to grant to your orator a writ of subpœna, &c.

Exhibit A.—Charles Bennett's will.

Exhibit A.

The last will and testament of Charles Bennett, of Alexandria, District of Columbia, made in sane mind, but infirm in body, Jan. 1st, 1835.

1st. My just debts, of which there are very few and of trifling amount, to be first paid.

2d. I give and bequeath to Elizabeth Smith, the daughter of my old and esteemed friend Hugh Smith, two thousand dollars.

3d. To his second daughter, Sarah, two thousand dollars.

4th. To Rebecca Roberts, the daughter of my friend John Roberts, two thousand dollars.

5th. To Oscar Charles Roberts, her brother, one thousand dollars.

6th. To Nathaniel Wattles, in trust for his daughters Ellen, Caroline, and Elizabeth, two thousand two hundred and fifty dollars, that is, seven hundred and fifty for each.

7th. To Thomas Smith, of Buckland, for the use of his wife and children, in trust, two thousand dollars.

8th. To Mrs. Ann Mark, for use of herself and family, two thousand dollars.

9th. To Joseph B. Hill, of Prince George's county, Maryland, in trust for the use of James R. Riddle and wife, or the survivors of them, fifteen hundred dollars.

10th. To Rosalie C. Patton, a late ward of mine, five hundred dollars.

11th. To Mary and Eliza Eaches, daughters of Joseph Eaches, five hundred dollars each.

12th. To Lucy Fowler, of Fairfax county, one thousand dollars.

13th. To Hugh C. Smith, for the use of his children, two thousand dollars.

The above is intended by the bequeather to extend to the heirs, &c., of all the different persons to whom it is bequeathed, in case of death, and to be so construed; but R. I. Taylor is fully authorized in every case of ambiguity to give the construction intended.

14th. I have always considered Henry Fisher's family free; they are to be so considered; and though I have kept an account against Fanny, it has been merely for my own satisfaction to see what she cost me. She is not to be called on for anything. To her husband I give and bequeath five hundred dollars, (Henry Fisher,) recommending him to remove with his family to a non-slaveholding State, and I particularly

recommend him to my nephew Wm. Wheeler and John M. Lisle, of Pennsylvania.

15th. To Francis E. Rozer and John M. Lisle I leave the direction of all relating to William Wheeler. I have vested with the latter the funds intended for his use, in consequence of being obliged to take possession of his estate and blend it with my own; he is at liberty and is enjoined, whenever he considers said William may be safely trusted, to give him possession of all left for his use. The landed estate I wish preserved if it can be; it stands deeded in the name of Francis E. Rozer and John M. Lisle, and is under the management of John I. Jenkins, in Charles county, Maryland; having come through Wm's family 200 years ago, I should regret its not continuing.

16th. To Francis E. Rozer I leave all my liquors, horse, books, furniture, watch, &c., clothes, &c.

18th.

19th. My belief is that James R. Riddle, if he has his health, understands my concerns better than any one else; I would, therefore, recommend my executors employing him to wind them up as speedily as prudence permits; he has my fullest confidence.

20th. The residue of my estate is left in trust of Hugh Smith, Robert I. Taylor, and Phineas Janney for such purposes as they consider promises to be most beneficial to the town and trade of Alexandria; if any difficulty occurs in construction as to any of my bequests, R. I. Taylor is specially charged to give said construction.

Hugh Smith, Robert I. Taylor, and Phineas Janney, are solicited to act as my executors; and in case either should die the following gentlemen in the order named to be substituted—Hugh C. Smith, Francis E. Rozer, and either of my surviving executors to name one, if one should be wanted. CHARLES BENNETT. [SEAL.]

B.

Codicil to my will. My executors will pay to my physician and neighbor, Doctor Wm. Washington, five hundred dollars. ($500.)

To John Grubb, tobacconist, five hundred dollars. ($500.)

The sum in trust left to Mr. Hill, for the use of James R. Riddle and wife, fifteen hundred dollars, or the survivor of *them*, is revoked, so far as regards Mr. Hill and the parties mentioned, and instead thereof, I leave to said Emily Riddle, for the use of herself and James R. Riddle, her husband, during life, or the survivors of them, two thousand dollars, to be promptly paid them out of my estate, when the bequest is at an end, so far as regards the estate; in plain words, and so my executors will understand, it is my intention to give to Mr. and Mrs. Riddle out of my estate, two thousand dollars, neither more nor less. Mr. Riddle will continue to wind up my business, as better fitted for said purpose than any one else. I know my executors will allow him what they consider an adequte compensation for same per annum. I presume what I have allowed him for some years past will be thought so. A decent house to live in, and four hundred and fifty dollars per annum.

I leave to John H. Crease's family, five hundred dollars.

CHARLES BENNETT. [SEAL.]

To Rebecca Taylor, for the use of her daughter Mary Ann, five hundred dollars.

To Elizabeth Marbury, a little girl, the daughter as I believe of the late Francis Marbury, living with her mother, adjoining Horatio Claggett's boarding house, two hundred and fifty dollars.

To little Virginia Rose, two hundred and fifty dollars, and the sum I at present owe to Mrs. Jno. Washington, for her schooling, up to the present period, which I promised to pay her whenever she let me know what it was, I wish paid.

To Elizabeth Dunbar, her half sister, I give and bequeath two hundred and fifty dollars. Alexandria, 18th April, 1835.

CHARLES BENNETT. [SEAL.]

Now in the enclosure I leave the residue of my estate, after paying all bequests and appropriations, to some disposition thereof which my executors may consider as promising most to benefit the town and trade of Alexandria. Now I leave the same entirely to their disposition of it, in such manner as appears to them promises to yield the greatest good. CHARLES BENNETT. [SEAL.]

Now I have not made provision in case of accident to Jno. M. Lisle, with whom I vested the funds for Wm. Wheeler, concerning the amount as much as he could want for use; now if any mischance should happen thereto, Mr. Smith, Taylor, and Janney, will take care and provide out of my estate, so that Wm. Wheeler does not suffer the want of the sum intended for him, or what they deem necessary under the circumstances. CHARLES BENNETT. [SEAL.]

C.

To my executors, Hugh Smith, Robert I. Taylor, and Phineas Janney, in addition to my will deposited in the Bank of Potomac.

To Henrietta F. Rozer, the wife of Francis E. Rozer, one thousand dollars, and in case of her death to her eldest son, and of his death as she may bequeath it.

To Fanny Fisher, the wife of my man Henry, two hundred and fifty dollars.

To George, who lives with me, a release of whatever portion he may owe me of monies paid Captain J. McGuire for his freedom.

January 1st, 1836. CHARLES BENNETT. [SEAL.]

D.

To Hugh Smith, Robert I. Taylor, and Phineas Janney, my executors. Whereas, in my will I have left the following bequests. To Elizabeth Smith and Sarah Smith, daughters of Hugh Smith, and Rebecca Roberts, two thousand dollars, the daughter of Jno. Roberts, each. Now, be it known, that said bequests are to be paid out of my estate, in corporation 6 per cent. stock of the corporation stock of the town of Alexandria; interest payable half-yearly; my other bequests

are all payable in money. Witness my hand and seal this 12th December, 1836. CHARLES BENNETT. [SEAL.]

E.

In case of my decease before making the alteration with my own hand in my will, I hereby request and direct my executors to revoke and disannul the bequest or acquittal made in the same to George Humphreys of the debt he owes me, and that the same should remain part of my estate.

Given under my hand this 8th June, 1837.

CHARLES BENNETT. [SEAL.]

Witness—J. R. RIDDLE.

F.

I, Charles Bennett, do make this codicil to my last will and testament. I authorize and empower my executors to emancipate my female slave Fanny, and her children, or such of them as they may think proper, at such times and on such terms as they may deem expedient; and to enable such of them as may be under age, to acquire the means of supporting themselves, I authorize my executors to bind them out to learn some useful trade or calling. Given under my hand this 12th day of December, 1837.

CHARLES BENNETT. [SEAL.]

Published and declared by the testator as a codicil to his last will in our presence—

J. R. RIDDLE,
JOSEPH GRIGG.

G.

I, Charles Bennett, do make this further codicil to my last will and testament, that is to say: I bequeath to James R. Riddle, as an additional compensation for his services, the sum of two thousand dollars. In witness whereof I have hereto set my hand this eighteenth day of January, 1838. CHARLES BENNETT. [SEAL.]

Witness—JOSEPH GRIGG.

H.

Messrs. Hugh Smith, R. I. Taylor, and Phineas Janney. No security to be required of my executors; they have all the confidence I can have in men.

Feb'y 15th, 1834. A part of my will.

CHARLES BENNETT. [SEAL.]

At an adjourned session of the orphan's court for Alexandria county, in the District of Columbia, held this 4th day of May, 1839, this last will and testament of Charles Bennett, late of Alexandria county, deceased, with several codicils, were exhibited to the court by Robert I. Taylor, Phineas Janney, and Hugh Smith, the executors therein named, and the same proved in the following manner, that is to say: The will aforesaid, dated the 1st January, 1835, and marked A, and

four of the codicils dated as follows: 15th February, 1834, marked H. April 18th, 1835, marked B. January 1st, 1836, marked C, and December 12th, 1836, marked D, were all proved to be wholly in the handwriting of the aforesaid testator, by the oaths of William H. Foote and James Millan, of Fairfax county, Virginia, and Alexander Moore, register of wills, of Alexandria county, District of Columbia. And the codicil dated the 8th June, 1837, and marked E, was proved by the oath of James R. Riddle, the witness thereto, that the testator acknowledged the same to him to be a codicil to his last will and testament, and that he was at the time of such acknowledgment of sound mind and disposing memory, and that the deponent subscribed his name thereto as a witness, in the presence of the testator, and at his request. And the codicil dated the 12th December, 1837, and marked F, was in like manner proved by the oaths of James R. Riddle and Joseph Grigg, witnesses thereto. And the codicil dated the 18th January, 1838, and marked G, was in like manner proved by the oath of Joseph Grigg, the only witness thereto. And William Wheeler, of Chester county, Pennsylvania, the nephew and only heir at law of the deceased, having been duly notified to attend and shew cause, if any, why the aforesaid will and seven codicils should not be proved and recorded, and he having accordingly attended in person, and made no objection thereto, but assented to their being proved and recorded in the manner above stated. Whereupon, the court ordered the will, with the seven codicils, marked and dated as aforesaid, to be recorded, and separate bonds without security were executed by the aforesaid executors, in conformity with the will of the testator, which bonds are also ordered to be recorded, and letters testamentary granted them.

Teste: A. MOORE, *Register Wills.*

DISTRICT OF COLUMBIA, *sct:*

I, Alexander Moore, register of wills for Alexandria county, in the District of Columbia, do hereby certify, that the foregoing and annexed is a true copy of the last will and testament of Charles Bennett of said county, deceased, together with seven codicils thereto annexed, and also of the proceedings had thereon before the orphan's court of the county aforesaid; all of which appears of record in my office.

Given under my hand and official seal, this 31st day of May, [L. S.] 1839. A. MOORE,

Register of wills, Alexandria county, D. C.

Exhibit.—(Release.)—*Release.*

Whereas, Charles Bennett, esq., late of Alexandria, deceased, by his last will and testament, after bequeathing sundry pecuniary legacies, devised as follows: The residue of my estate is left in trust of Hugh Smith, Robert I. Taylor, and Phineas Janney, for such purposes as they consider promise to be most beneficial to the town and trade of Alexandria; if any difficulty occurs in construing as to any of my bequests, R. I. Taylor is specially charged to give the said construction;

and in a codicil to his said will, expresses himself as follows: Now, in the inclosure, I leave the residue of my estate, after paying all my bequests and appropriations to same disposition thereof, which my executors may consider as promising most to benefit the town and trade of Alexandria. Now I leave the same entirely to their disposition of it, in such manner as appears to them promises to yield the greatest good. And whereas the validity of the said devise and bequest has been controverted by William Wheeler, now of Chester county, in the State of Pennsylvania, claiming to be the nephew and sole heir of the said Charles Bennett. Now the said executors, taking on themselves the burden of the execution of the said will, and of the trusts aforesaid, and the said William Wheeler, to avoid the delay and expense of litigation, and finally to settle and adjust all doubts and difficulties which might arise on the effect of the said will, so as to leave the said executors to execute the same without delay or impediment, have agreed on the following terms of compromise.

1st. That the said executors shall within one year from the date hereof, at all events, or sooner if funds in cash remain in their hands, after the payments of the money legacies bequeathed by the said will, pay to the said William Wheeler, or his order, the sum of twenty-five thousand dollars. Secondly, that they shall release to the said William Wheeler all claims, if any they have, to any property, real or personal, heretofore conveyed or settled in any way by the said Charles Bennett in his lifetime, for the use of the said William Wheeler. Thirdly, that the said William Wheeler on his part shall release to the said executors all his claims, in law or equity, to the estate real and personal, devised and bequeathed or intended to be devised or bequeathed by the said Charles Bennett, by his said will, to be held and disposed of by the said executors in the manner in and by the said will prescribed. And that the said executors shall be at liberty, if any specification of the objects to which the residuary fund is to be applied be thought necessary, to apply the same to aid in finishing the Alexandria Canal, either by a direct subscription to its stock, or by purchasing in the stock of the Alexandria Corporation, issued or to be issued in payment of the subscription of the said corporation to the said canal, to the extinguishment of the debt of the Corporation of Alexandria, to introduce into the town, for the use of the inhabitants, a supply of pure and wholesome water; and to subscribe to any railroad or other roads communicating with the said town; to any or to all of the above purposes in such way as the said executors or the survivors may think most conducive to the prosperity and welfare of the town. Now, therefore, the said executors do hereby covenant with the said William Wheeler, that they will, within twelve months from the date hereof, or sooner if cash funds remain after paying the pecuniary legacies, pay to him or his assigns, the sum of twenty-five thousand dollars. And the said executors do hereby forever release to the said William Wheeler, his heirs and assigns, all claims and demands they have or may have hereafter under the said will, to any estate real and personal heretofore given,

settled, or conveyed, by the said Charles Bennett, in his lifetime, to the said William Wheeler, or to any person or persons in trust for him, and more especially to twenty thousand dollars stock of the State of Pennsylvania, standing in the name of John Lisle and John K. Mitchell, for the use of the said William; and they do moreover covenant to execute and deliver all further deeds or other instruments necessary to carry into effect this arrangement. And the said William Wheeler does on his part hereby forever release to the said executors all his right, title, claim and demand, in and to all the estate, real and personal, devised or intended to be devised by the said Charles Bennett, by his said will, for the purposes expressed in his will, with power to the said executors to appropriate the residuary fund as before specified, if any particular designation of the purposes be necessary. And the said William Wheeler, for himself and his heirs, does hereby covenant with the said executors and their representatives, to execute and deliver all such further deeds of conveyance and release as may be found necessary, more fully to carry into full effect this agreement.

In witness whereof, the parties to this instrument have hereto set their hands and seals, this 4th day of May, 1839.

WM. WHEELER, [SEAL.]
HUGH SMITH, [SEAL.]
R. I. TAYLOR, [SEAL.]
PHINEAS JANNEY. [SEAL.]

Sealed and delivered in presence of—
ROBERT H. MILLER,
WM. H. FOOTE,
JAS. MILLAN.

Received from Hugh Smith, Robert I. Taylor, and Phineas Janney, executors of Charles Bennett, deceased, five thousand dollars, in part payment of the sum covenanted to be paid by the above agreement, May 4th, 1839.

[$5,000.] WM. WHEELER.

DISTRICT OF COLUMBIA, *sct:*

I, Alexander Moore, register of wills for the county of Alexandria, in the district aforesaid, do certify the foregoing to be a true copy of the articles of agreement between William Wheeler and the executors of Charles Bennett, deceased, as of record in my office.

In testimony whereof I have hereunto set my hand, and affixed my official seal, this 10th day of May, 1843.

[L. S.]

A. MOORE, *Register Wills.*

I, Christopher Neale, judge of the orphan's court of Alexandria county, in the District of Columbia, do certify the foregoing certificate of Alexander Moore, register of wills for the county aforesaid, to be in due form. Given under my hand this 10th day of May, 1843.

CHR. NEALE.

Executors' first account—

DR. *The estate of Charles Bennett, deceased, in account with*

1839 and 1840 1			$5,000 00 2,390 00 4,854 17 3,000 00		Dolls. Cts.	Dolls. Cts.
5	To cash paid Wm. Wheeler		9,350 00		24,594 17	
	" " " goods	-	184 75			
	Interest	- -	221 08			
			00 00	2	405 83	
7	" " Henry Fisher	-	450 00	6		
and 8	" " Fanny Fisher	-	250 00	7	500 00 250 00	
			750 00	8		
9	" " N. Wattles -	-	1,500 00	9	2,250 00	
			2,000 00	5		
10 and 11	" " J. R. Riddle	-	2,000 00	15	4,000 00	
12	" " Ann Mark's legacy	- -		10	2,000 00	
13	" " Tho. Smith's legacy	- -		11	2,000 00	
14	" " Hugh C. Smith's legacy	-		12	2,000 00	
15	" " Wm. Washington	- -		13	500 00	
16	" " John Grubb	- - -		14	500 00	
17	" " Eliza. Dunbar	- - -		16	250 00	
18	" " M. A. Taylor	- - -		18	500 00	
19	" " Lucy Fowler	- - -		19	1,000 00	
20	" " Oscar Roberts	- - -		20	1,000 00	
21	" " Rose C. Patton	- - -		25	500 00	
22	" " Virginia Rose	- - -		27	250 00	
23	" " Joseph Eaches	- - -		28	1,000 00	
24	" " Eliza Marbury	- - -		29	250 00	
25	" " C. B. Rozier	- - -		33	1,000 00	
26	" transfer of Alexandria corporation stock to Jane Smith, a legacy under the will	- - -		26	2,000 00	
27	" same to Sarah K. Smith	- -		27	2,000 00	
28	" same to Rebecca Roberts	- -		28	2,000 00	
	" legacies and compromise with W. H. Wheeler	- - - -				
1840						50,750 00
No. 29	" various payments made by J. R. Riddle	- - - - -		17	621 35	
				26	157 50	
				31	25 50	
				37	265 64	
				38	164 92	
				42	301 28	
						1,536 19
	" balance of his (J. R's) account	-			–	187 27
	" sundries	- - - -			–	9 72
	" sundry bill and fees	- - -			–	168 47
	" cash paid for 6 per cent. Corporation stock	- - - -			–	30,000 00
	" paid Register of Wills	- -			–	47 86
	" 7½ per et. commission on $96,989 08 received, exclusive of $20,000 corporation stock, on which the court					

First account.

Hugh Smith, Robert I. Taylor, and Phineas Janney, ex'rs. CR.

1839. May	By cash in Bank of Potomac at the testator's death		$14,406 53	
	corporation 6 per cent. stock, appraised at its par value		20,000 00	
				$34,406 53
			Gain.	*App'd value.*
	amount sales 10½ shares Little River stock		$105 00	$420 00
	" " 100 shares Marine stock		–	500 00
	Farmers and Mechanics' Bank, Georgetown, 240 shares		1,800 00	2,400 00
	Bank of Potomac, 125 shares		431 50	9,375 00
	Bank of America, 60 shares		261 96	6,900 00
	cash of Ann R. Rose in full		–	18 91
	" Josiah H. Davis "		–	8 84
	" E. I. Lee "		–	24 77
	" John M. Lisle "		–	8 72
	" Rebecca Taylor, on account		–	729 71
	" Asa Rogers in full		–	550 00
	" Thomas W. Smith in full		–	5,000 00
	" Francis E. Rozier "		–	1,760 00
	" Cuthbert Powell "		–	5,047 62
	" M. Snyder and J. P. Cowman, in full		–	700 00
	" Anthony Addison in full		–	140 00
	" John H. Brent "		–	3,000 00
	" N. Beveridge "		–	200 00
	" Thomas Smith "		–	2,000 00
	" D. Martin and J. H. Davis in full		–	500 00
	" John Bright		–	395 00
	" John Creighton, 2 notes		–	200 00
	" " " in full		–	134 54
	" Clagett and Page "		–	700 00
	" Reid Cross "		–	1,000 00
	" N. Conrad "		–	244 48
	" Crupper and Dean "		–	600 00
	" Dean, Harmon and Miller		–	306 17
	" same		–	420 25
	" James Dashields		–	111 56
	" Wm. H. Foote		–	500 00
	" John Grubb		–	300 00
	" James Green		–	600 00
	" Joseph Gregg		–	400 00
	" N. S. Grigsby, 2 notes		–	426 07
	" H. R. Green		–	341 17
	" A. H. Hixon		–	150 00
	" John Ish		–	980 87
	" George Hill		–	353 33
	" Magrath's 2 notes		–	249 86
	" J. H. Maddox		–	84 64
	" Peyton Powell		–	287 10
	" M. H. Read		–	353 61
	" Z. Simpson		–	330 00
	" Samuel Tansill		–	355 13
	" J. M. Tyler		–	156 72
	" Edw. Smyth		–	500 00
	" " on account of $1,500		–	1,104 50
	" " "		–	400 00
	" John Grubb		–	150 00
	" James Green		–	1,000 00

First account—

	allows 2½ per cent. commission, as the same is disposed of by the executors; $6,000, as directed by the testator, has been transferred to the Misses Smith and Miss Roberts, and debited in this account, vide vouchers 26, 27, 28 - -		-	$7,274 18
	To 2½ per cent. commission on $82,701 26 paid - - - - -		-	2,067 53
	balance due the estate (including $14,000 6 per cent. corporation stock -		-	24,946 11
	Edgar Snowden, for order of publication		-	1 75
			Dollars	116,989 08

Continued.

1839, May	By cash of D. F. Hooe, 2 notes	- -	–	$2,000 00
	" Joseph Harris	- - -	–	1,000 00
	" John Hasson	- - -	–	150 00
	" Edw. S. Hough	- - -	–	200 00
	" Jamieson and Sanford	- -	–	736 35
	" J. and Wm. H. Irwin, on account		–	200 00
	" S. G. Kneller & Co., 2 notes	-	–	2,361 00
	" J. D. Kerr, 2 notes	- -	–	1,000 00
	" J. R. M. Lowe	- - -	–	287 00
	" Sullivan and Locke	- -	–	145 20
	" Samuel Lunt	- - -	–	179 37
	" Ezra Lunt -	- - -	–	125 73
	" Lambert & McKenzie	- -	–	400 38
	" John Major	- - -	–	100 00
	" E. Morgan	- - -	–	100 00
	" Middleton & Beall	- -	–	447 16
	" Wm. N. & J. N. McVeigh, 2 notes		–	2,100 00
	" Jas. Raisin	- - -	–	1,216 30
	" Samuel Solomon	- - -	–	300 00
	" Samuel Whiteall	- - -	–	1,275 00
	" Wright & Harper -	- -	–	1,000 00
	" R. Washington & Co.	- -	–	1,000 00
	" W. S. Ferrell	- - -	–	351 62
	" Jonathan Butcher & Co.	- -	–	168 26
	" G. & R. Allison	- - -	–	162 50
	" J. P. Cowman & Co.	- -	–	229 53
	" Dr. William Washington	- -	–	29 13
	" interest and dividends	- -	$6,163 07	
	" rents received	- - -	440 20	
	" goods appraised	- - -	223 93	1,573 79
			$9,425 66	
	Real estate sold.	Credit.	Cash.	
	Doctor Powell -	- $2,750	$500	
	Major Cooper -	- 1,000	1,000	
	J. R. Riddle -	- 1,200	400	
		$4,950		
			–	1,900 00
	By amount brought down, gained by sales, rents, and interest -	- - -	–	9,425 66
			Dollars	116,989 08
				$116,989 08
	Corporation stock	- - - -	–	20,000 00
				$96,989 08
1840, June	By balance due the estate, including $14,000 corporation stock	- - -	–	$24,946 11

HUGH SMITH,
R. I. TAYLOR,
PHINEAS JANNEY,
Executors of Charles Bennett, deceased.

A copy—teste: B. HOOE, *Reg'r of Wills.*

To the death of R. I. Taylor. Executors' second account—

DR. *The estate of Charles Bennett, deceased, in account with*

			Dolls. Cts.
1840			
	To corporation taxes, &c., per J. R. Riddle's statement - -		283 83
June 6	" Cash paid for corporation stock - - - -		12,000 00
July 23	" " " do. do. - - - -		6,000 00
" 25	" " " do. do. - - - -		2,000 00
Sept. 31	" " " do. do. - - - -		1,000 00
	" " " E. Snowden, for publishing acc'ts - -		3 50
	" " " A. Moore, register of wills - - -		22 86
	" $14,000 corporation stock transferred to the executors -		14,000 00
	" 7½ per cent. com. on $7,698 49 received -	$577 39	
	" 2½ " " " $21,310 19 paid -	532 75	
			1,110 14
			36,420 33
1840			
Sept. 21	To balance due the executors - - - - -		$3,775 73

Second account.

Hugh Smith, Robert I. Taylor, and Phineas Janney, ex'rs. CR.

By balance from first account, including $14,000 Corporation stock	$24,946 11
" interest on Corporation stock	1,398 00
" dividend on Marine stock	103 06
" cash of Samuel Cooper	30 00
" " McCarty's bond	60 00
" " Colston's bond	160 00
" " Evans	16 82
" " J. M. Patton	128 00
" " Rebecca Taylor, on acc't	300 00
" " J. A. Evans	283 18
" " Edward Smyth	363 50
" " Wm. L. Powell, $700 & $125	825 00
" " John M. Patton	2,000 00
" sales 26 shares Potomac Bank stock	2,030 93
" balance due the executors	3,775 73
	$36,420 33

Errors excepted.

HUGH SMITH,
PHINEAS JANNEY,
Surviving executors of C. Bennett, dec'd.

A copy—teste: B. HOOE, *Reg'r of Wills*

Executors' third account—

DR. *The estate of Charles Bennett, dec'd, in account with*

1840.			
Sep.	21	To balance due the executors - - - - -	$3,775 73
Dec'r	2	" cash paid Alex'r Moore, reg'r, $6 74 and 1 75 -	8 49
	31	" " " Corporation stock - - - -	2,000 00
1841.			
Jan'y	8	" " " ditto - - - - -	3,000 00
	21	" " " Alex'r Moore, register, - - - -	5 00
	"	" " " Corporation stock - - - - -	3,000 00
March	15	" " " ditto - - - - -	3,000 00
	"	" " " E. Snowden - - - - -	9 25
July	16	" " " Corporation stock - - - - -	6,000 00
May	1	" " " J. R. Riddle, real estate, &c., - - -	241 25
Aug.	1	" " " Alex'r Moore $22 86, E. Snowden $1 75 -	24 61
		Commissions - - - - -	2,203 69
		" balance carried down, due the estate - - -	351 78
			$23,619 80

Third account.

Hugh Smith, Phineas Janney, and Hugh C. Smith, ex'rs. CR.

1840.			
Octo.	8	By cash from Colston, and interest in full	$1,925 57
		" " " Potomac Bank stock, 2 shares	156 00
Nov.	11	" " " F. Rozier's estate, and interest in full	335 67
	21	" " " dividends Fire office $75; B'k Potomac $125	200 00
	"	" " " Potomac B'k stock, 7 shares	534 00
	"	" " " real estate, J. R. Riddle, and interest	413 60
	"	" " " Royston note, and interest in full	547 87
	28	" " " real estate, Geo. H. Smoot	500 00
	"	" " " Bank of Potomac, 14 shares	1,064 00
Dec'r	10	" " " C. C. Stuart on account of bond	500 00
	31	" " " Bank of Potomac stock, 21 shares	1,606 50
1841.			
Jan'y	4	" " " G. C. Powell, interest	24 00
	"	" " " dividend marine stock	99 25
	6	" " " C. Hunton, interest on bond	50 67
	"	" " " Corporation stock, interest	384 00
	11	" " " Major Cooper, interest on bond	30 00
	15	" " " Rebecca Taylor on account of bond	1,074 21
	"	" " " interest Corporation stock	1,716 00
	21	" " " B. Rust in full, and interest	547 50
	28	" " " interest, C. Powell	309 28
	"	" " " real estate, Dr. Washington, in full	25 00
	"	" " " W. Smyth, bond interest	120 00
Feb'y	8	" " " Potomac Bank stock, 1 share	77 00
	"	" " " Asa Rogers, account bond and interest	567 50
	12	" " " interest, Whitehall $200, McCarty $60	260 00
March	5	" " " interest, T. Smith	1,010 00
	19	" " " G. & R. Allison, div'd of all; loss 752 50 cts.	85 00
	20	" " " Bank of Potomac, 1 share	77 50
	23	" " " Dean, Harmon and Miller, interest	40 26
	12	" " " Wm. M. McCarty on account bond	500 00
	15	" " " W. McLean, interest	54 25
April	1	" " " S. Whitehall, do.	50 00
	"	" " " J. & W. H. Irwin, account	211 00
	"	" " " Bank of Potomac stock, 4 shares	310 00
May	3	" " " divid'd, Potomac Bk., $12 50; Fire office $100	112 50
	"	" " " rents received by J. R. Riddle	244 95
	17	" " " Fire Insurance stock	600 00
	27	" " " S. Whitehall, interest	73 23
June	7	" " " W. Smyth, bond and interest, in full	2,048 00
	"	" " " Baltimore Steamboat stock, in full	57 00
	"	" " " Ed. Smyth $140 10; W. McLean $169 25	309 00
	"	" " " J. & W. H. Irwin	100 00
	"	" " " Rebecca Taylor, account of bond	350 00
	18	" " " real estate, Major Cooper, in full	1,029 67
	"	" " " marine office dividends	99 25
	"	" " " real estate, Dr. Powell	490 22
	"	" " " Corporation stock, dividends	2,250 00
	"	" " " real estate, Methodist Church account	450 00
			$23,619 80
1841		By balance brought down, due the estate	$351 78

HUGH SMITH,
PHINEAS JANNEY,
HUGH C SMITH,
Executors of O. Bennett, deceased.

Executors' fourth account—

DR. *Estate late Charles Bennett, in account current with*

1841.				
October 1	To cash paid for Corporation stock - - -	–		$2,000 00
Dec'r 31	" sundry repairs to houses - - - -	$143 36		
"	" maintenance old servant - - - - -	35 00		
"	" E. Snowden, for printing - - - - -	1 56		
"	" taxes - - - - - - - - -	63 78		No. 1, 243 70
1842.				
Janu'y 8	" cash paid Sears, (carpenter,) for shingling Eaches and Dr. Dorsey's houses - -	96 02		
"	" cash paid G. H. Smoot and Uhler, shingles, &c.	86 63		No. 2, 182 65
"	" " books for library - - - -	16 50		
"	" " grate for Eaches' house - - -	24 50		No. 3, 41 00
19	" " Corporation stock - - - -	–		6,000 00
"	" " E. Snowden - - - - -	–		1 75
"	" " A. Moore, reg'r wills - - -	–		22 86
Feb'y 3	" 10 per cent. commission on $9,333 10 - -	–		933 31
"	" balance due the estate - - - - -	–		259 61
				$9,684 88

Fourth account.

Hugh Smith, Phineas Janney, and Hugh C. Smith, ex'ors. CR.

1841.						
July	31	By amount	bal. per 3d settlement	–	–	$351 78
	"	" "	Potomac Bk. stock	–	–	39 23
				Prin'l	*Interest.*	
Aug't	19	" cash	T. Swann's estate	$327 00	$156 73	484 20
	"	" "	W. M'Lean	330 75	13 10	343 85
	"	" "	Ed. Smyth	256 90	27 74	284 64
	20	" "	J. M'Carty	–	45 00	45 00
Sep.	30	" "	Methodist Church	–	41 90	41 90
	"	" "	Dr. Powell, real estate	143 35	39 95	183 30
Octo.	24	" "	24 shares Fire Insur'ce stock	–	–	250 00
	"	" "	div'd F. I. Stock, $57 50, Bk. Po. $12 50	–	–	70 00
Dec'r	10	" "	G. H. Smoot, real estate	500 00	30 25	530 25
	31	" "	rents p. J. R. Riddle	–	–	324 75
1842.						
Jan'y	3	" "	S. B. Hunton	953 00	247 00	1,200 00
	"	" "	div'ds Marine Insur'ce stock	–	–	99 25
	"	" "	C. Powell, interest	–	137 78	137 78
	17	" "	Corporation stock disc'ted, $2,520, off 25	–	–	2,495 00
	"	" "	J. and W. H. Irwin, $276 66 $25 74	276 66	25 74	302 40
	"	" "	Dean, Harmon and Miller,	750 00	36 12	786 12
	"	" "	Dr. Powell, real estate	937 75	137 82	1,075 57
	"	" "	G. H. Smoot, do.	500 00	29 36	529 36
	"	" "	Charles Hunton	–	24 00	24 00
	24	" "	Th. & C. P. Stabler, 4th div'd	–	–	2 50
	31	" "	A. Rogers	–	60 00	60 00
	"	" "	G. C. Powell	–	24 00	24 00
						$9,684 88
1842.						
Feb'y	3	By balance due the estate		–	–	$259 61

Errors excepted. Alexandria, Feb'y 3d, 1842.

HUGH SMITH,
PHINEAS JANNEY,
HUGH C. SMITH,
Executors of Charles Bennett, deceased.

A copy—teste:

B. HOOE, *Register of wills.*

Executors' fifth account—

DR. *Estate of late Charles Bennett, in account current with*

1842			Dolls.	Cts.
May	3	To cash paid fire insurance - - - - -	18	00
Feb.	17	" " maintenance old Peggy, slave - - - -	25	00
April	"	" " Tyler, plasterer, Columbus str. - - - -	40	32
		" " paper hanging - - - - - -	16	87
		" " Rudd, painting - - - - - -	68	52
June	7	" " A. P. Gover, oil and paint - - - -	31	20
July	7	" " Geo. Swain, (carpenter) - - - -	40	02
		" " Nicholas, for bells and locks - - - -	8	25
	15	" " Corporation taxes - - - - -	61	49
		" " J. H. Crease, family legacy $437 50, int. 57 89 -	495	39
		" " Corporation stock - - - - -	5,000	00
		" " N. Kell, repairs on Eaches' house - - -	15	00
		" " transfer Alex'a canal stock at appraisement - -	1,000	00
		" " cash paid E. C. Fletcher, maintenance old Peggy -	10	00
		" " balance carried down - - - - -	808	54
			$7,638	60
		To cash paid A. Moore, reg'r of wills - - - -	22	86
		" " E. Snowden - - - - -	1	75
		" 10 per cent. comm'n on $7,378 99 - - - -	737	90
		" balance due the estate - - - - -	46	03
			$808	54

Fifth account.

Hugh Smith, Phineas Janney, and Hugh C. Smith, exe'rs. CR.

			Dolls.	Cts.
1842				
	By	balance in bank as per settlement No. 4 - - -	259	61
Feb. 25	"	cash interest from M'Carty - - - - -	45	00
May 4	"	" rent from Dr. Dorsey - - - - -	60	00
	"	" Joseph Eaches do. - - - - -	62	50
	"	" H. Fisher do. - - - - -	15	00
	"	" dividend Fire Insurance Company - - -	57	50
	"	" do. Bank of Potomac - - - -	10	00
	"	" J. Butcher's estate, final div'd - - - -	9	76
	"	" S. Whitehall on acc't $423 90, int. $126 49 - -	550	39
June 1	"	" G. H. Smoot, real estate $500, int. 45 25 - -	545	25
6	"	" J. Butcher's estate, div'd - - - -	20	00
July 2	"	" Marine Insurance Co., div'd - - - -	99	25
1	"	" Corporation stock, $12,800 do. - - -	384	00
15	"	" do. do. $77,200 do. - - - -	2,316	00
	"	" J. R. Riddle, real estate, $800, int. $107 06 - -	907	06
	"	" Rebecca Taylor, $250, int. 32 46 - - -	282	46
	"	" Thomas Smith, int. - - - - -	497	17
	"	" Wm. L. Powell, real estate $437 50, int. 74 45 -	511	95
	"	$5,000 Alexandria Canal stock, valued by the appraisers, transferred to the executors of C. B. - - -	1,000	00
	"	cash rents per E. C. Fletcher, $6, less com. 30 cts. -	5	70
			$7,638	60
1842				
July 15	By	balance brought down - - - - -	$808	54

HUGH SMITH,
PHINEAS JANNEY,
HUGH C. SMITH,
Executors of Charles Bennett, deceased.

A copy—Teste: B. HOOE, *Reg'r of wills.*

Executors' sixth account—

DR. *Estate of Charles Bennett, in account with*

			Dolls. cts.
1842.			
Aug.	18	To cash paid Crease's legacy, in full, to Mrs. Nelson - -	70 76
	"	" " " expenses to city, sale of lots - - -	2 88
1843.			
Jan'y	4	" " " Wm. Fowle & Son, "Engineers' Journal" -	10 28
	"	" " " R. Johnston, drawing deed city lots, pr. agreement - - - - - -	3 00
	"	" " " H. Fisher, board and clothing old Peggy 6 mos. -	30 00
	"	" " " repairs, Dr. Dorsey's, $2 00, and Mrs. Smyth's houses 75 cts. - - - - -	2 75
	"	" " " renewal policy of insurance - - -	24 75
	"	" " " C. Fletcher for agency on real estate - -	12 20
	9	" " " Smoot and Uhler's bill for repairs - -	3 20
Feb.	1	" " " Dr. Washington, att. & med. old Peggy - -	5 00
	"	" " " Ed. S. Hough, blankets & clothing do. - -	6 26
	"	" " " C. Koones, for coffin & hearse do. - -	6 00
	"	" " " Harry, for digging grave for do. - -	1 50
	"	" " " H. Fisher, board and atten. for do. - -	9 00
	"	" " " for Alexandria Corporation stock, being the bal. of $30,000, for which the ex'rs guaranteed the Bk. of Potomac - - - -	5,000 00
		" balance carried down - - - - -	1,216 40
			$6,403 98
1843.			
Feb'y	4	To cash paid Edgar Snowden - - - - -	1 75
		" " " A. Moore, reg'r wills - - - -	22 86
		" 10 pr. ct. commission on $6,357 95 - - - -	635 79
		" balance due the estate - - - - -	556 00
			$1,216 40

Sixth account.

Hugh Smith, Phineas Janney, and Hugh C. Smith, ex'rs. CR.

			Dolls. cts.
1842.			
July 15	By	balance pr. settlement, 5th account	46 03
Aug. 9	"	cash C. C. Stuart's account mortgage	400 00
" 26	"	" J. M. McCarty, interest account	45 00
Sep. 12	"	" J. P. Ingle, sales account lot	481 44
"	"	" Bank of Potomac stock in full	360 00
"	"	" dividends Fire office, 115 shares	57 50
Nov. 22	"	" Charles Hunton, for interest	24 00
1843.			
Jan'y 4	"	" Marine stock, in full	1,885 75
7	"	" Asa Rogers, interest	60 00
14	"	" G. C. & H. B. Powell, interest	24 00
"	"	" C. Powell on account bond and interest	229 69
"	"	" rents per E. Fletcher	226 07
"	"	" interest on Corporation stocks, 6 months	1,532 00
18	"	" Fire Insurance stock, 75 shares	712 50
"	"	" H. Fisher, rent 7 months	21 00
30	"	" S. B. Hunter's account bond	299 00
			$6,403 98
1843.			
Feb. 4	By	balance brought down	$1,216 40
		Balance due the estate	$556 00

Alexandria, Feb'y 6, 1843.

HUGH SMITH,
PHINEAS JANNEY,
HUGH C. SMITH,
Executors of C. Bennett, deceased.

A copy—teste:

B. HOOE,
Reg'r of Wills.

Executors' seventh account—

DR. *Estate of Charles Bennett, deceased, in account with*

1840			V'r.	Dolls. cts.
March	10	To cash paid for Corporation stock, $1,000 - -	120	807 17
June	3	" " John Riston, for digging wells, &c., and finding materials 2 privies on Cameron street -	121	42 42
	15	" " E. Jones, for paving and repairs - -	122	32 55
	17	" " Thompson Tyler, for " - -	123	44 89
	17	" " Edw. Burchell, for taxes - - -	124	101 40
	28	" " Thompson Tyler, repairs on Cameron street	125	22 75
July	12	" " John Rudd, for painting - - -	126	94 33
	14	" " A. P. Gover, for paints and oils - -	127	48 62
	15	" " Corporation stock, 85 per cent., $7,000 -	128	5,950 00
Sept'r	28	" " Geo. Swaim, repairs on Cameron street -	129	45 05
1844				
Jan'y	9	" " Clerk's fee for recording deed - -	130	2 97
	9	" " Ed. Fletcher, repairs on Cameron street -	131	14 62
	9	" " " grate for E. Dorsey - -	131	8 00
	9	" " " E. Snowden's adv. bill - -	131	4 50
	9	" " " Fire Insurance - - -	131	24 75
	9	" " " his agency for 12 months -	131	22 05
	9	" " sundry bills, Hugh C. Smith - - -	132	47 30
Feb'y	5	" " commissioners of Holland loan for Corporation stock - - - - - -	133	1,500 00
	5	" " E. Snowden, publishing this account - -	134	1 75
	5	" " B. Hooe, register, his fees - - -	135	19 00
	5	" " 10 per cent. commission on $9,616 65 -	136	}
		Nos.	137	} 961 66
			138	}
				$9,795 78
1844				
Feb'y	5	To balance as per contra - - - - - -	-	$179 13

Seventh account.

Hugh Smith, Phineas Janney, and Hugh C. Smith, ex'rs. CR.

1842			
Jan'y	30	By balance due on last settlement - - - -	$556 00
		cash received for vacant lot on Patrick street, McLean -	277 12
Feb'y	21	" " John M'Carty, interest to August 15, 1843 -	90 05
	21	" " Fire Insurance stock in full - - -	402 97
May	20	" " Samuel Whitehall, interest - - -	103 56
	20	" " Washington City lots, in full, Cox - -	45 00
	20	" " Washington City lots, in full, Cox - -	59 33
July	15	" " interest on Corporation stock, $6,000 - -	180 00
	15	" " Thos. Smith of Buckland, in full, paid by Hugh Smith, his secretary - - - -	5,505 60
	15	" " interest on stock, per P. Janney - -	15 87
Sept'r	4	" " trustee, Jonathan Butcher - - -	14 00
	4	" " rent from Dr. Dorsey $60, M. Smyth, $75 -	135 00
	4	" " Joseph Eaches, $62 50, M. Smyth, $31 25 -	93 75
	20	" " Methodist church - - - -	28 57
	20	" " Wilson M. C. Fairfax - - - -	21 44
Nov'r	8	" " int. from J. & W. H. Irwin, per Wm. Easby -	25 00
	8	" " Ed. Smyth, for lot on Cameron street - -	230 00
	8	" " C. C. Stewart, interest to January 1, 1844 -	76 37
1844			
Jan'y	15	" " interest on Corporation stock, $6,000 - -	180 00
	16	" " S. B. Hunton on account, bond - - -	652 74
	16	" " rent, H. Fisher, $12, M. Smyth, $75 - -	87 00
	16	" " rent, Wilson M. C. Fairfax - - -	35 00
	16	" " Ashby's Gap turnpike - - - -	9 62
	17	" " Asa Rogers on account, bond - - -	300 00
Feb'y	1	" " interest on Corporation stock, $7,000 - -	210 00
	1	" " Joseph Eaches, for rent to October 1, 1843 -	31 25
	1	" " Henry Fisher, " " " -	9 00
	1	" " Charles Hunton, interest to January 1, 1844 -	24 00
	3	" " C. Powell on account, bond - - -	217 81
	5	balance due the executors - - - - -	179 13
			$9,795 78

Errors and omissions excepted. Alexandria, February 5, 1844.

HUGH SMITH,
PHINEAS JANNEY,
HUGH C. SMITH,
Executors of Charles Bennett, deceased.

A copy—teste:

B. HOOE,
Register of Wills.

Executors' seventh account—

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17	" " Thompson Tyler, for " - -		123	44 89
17	" " Edw. Burchell, for taxes - - -		124	101 40
28	" " Thompson Tyler, repairs on Cameron street		125	22 75
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14	" " A. P. Gover, for paints and oils - -		127	48 62
15	" " Corporation stock, 85 per cent., $7,000 -		128	5,950 00
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9	" " " grate for E. Dorsey - -		131	8 00
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9	" " " his agency for 12 months -		131	22 05
9	" " sundry bills, Hugh C. Smith - - -		132	47 30
Feb'y 5	" " commissioners of Holland loan for Corporation stock - - - - -		133	1,500 00
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		Nos.	137	961 66
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Hugh Smith, Phineas Janney, and Hugh C. Smith, ex'rs. CR.

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	15	" " interest on stock, per P. Janney - -	15 87
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	5	balance due the executors - - - - -	179 13
			$9,795 78

Errors and omissions excepted. Alexandria, February 5, 1844.

HUGH SMITH,
PHINEAS JANNEY,
HUGH C. SMITH,
Executors of Charles Bennett, deceased.

A copy—teste:

B. HOOE,
Register of Wills.

At another day, to wit, at rules held in the clerk's office of the court aforesaid, for the month of January, 1845, came the defendants by their solicitors, R. S. Coxe, H. W. Davis, and L. B. Taylor, esqrs., and filed a demurrer to the said complainant's bill, which demurrer is as follows:

Demurrer.

The demurrer of Hugh Smith, Phineas Janney, Hugh C. Smith, Morley E. Taylor, and Henry Daingerfield, defendants, to the bill of complaint of William Wheeler, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show, that the said complainant has not by his said bill made such a case as entitles him to any discovery in a court of equity from these defendants respectively, or any of them, or to any relief against them, as to the matters contained in said bill, or any such matters; and that any discovery that can be made by these defendants, or any of them, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainant to any relief in this court touching any of the matters therein complained of. Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and pray the judgment of this honorable court whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

R. S. COXE,
H. W. DAVIS,
L. B. TAYLOR,
Sol'rs for Defendants.

Joinder in demurrer, and same set down for argument.

At another day, to wit, at the rules held in the clerk's office of the court aforesaid, for the month of April, 1845, came the complainant by his solicitor aforesaid, and thereupon joined in the defendants' said demurrer, and the same is set down for argument at the next term of the court.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 10th day of June, 1845, came the parties aforesaid by their solicitors, and the cause is continued.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 18th day of October, 1845, came the parties aforesaid by their solicitors, and the cause is continued.

Cause submitted to the court.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 30th day of May, 1846, came the parties aforesaid by their solicitors, and the cause is submitted to the court.

Leave given to file an amended bill.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 16th day of October, 1846, came the complainant aforesaid by his solicitor aforesaid, and on motion leave is given him to file an amended bill, and to make the Common Council of Alexandria parties defendants, and amended bill filed; and by consent of parties the demurrer filed by the defendants to the original bill is to stand as against the amended bill this day filed, and which amended bill is in the words following, to wit:

Amended bill.

To the honorable the circuit court of the District of Columbia, in the county of Alexandria, William Wheeler (by leave just had to amend his bill against Charles Bennett's executors and others) respectfully sheweth:

That he is advised by his counsel that on fuller consideration it is deemed proper to make the Common Council of Alexandria a defendant to his bill, and he therefore prays that the said Common Council of Alexandria may be made a defendant to the said bill, and may answer the same. He asks for such decree against the said Corporation as the case which shall be made out by the pleadings and evidence shall entitle him to.

JOHN R. COOKE,
Of counsel for Wm. Wheeler.

Demurrer sustained.

And now here at this day, to wit, at a court continued and held for the District and county aforesaid, the 17th day of October, 1846, came the parties aforesaid by their solicitors, and thereupon the demurrer of the defendants to the complainant's bill being argued, it is the opinion of the court that the said demurrer is good.

Decree.

Therefore, it is decreed and ordered that the said bill be dismissed, and that the complainant pay to the defendants their costs.

Appeal.

From which decree the complainant prays an appeal to the Supreme Court of the United States, which is granted by the court, upon his giving bond and security in the penalty of $300, to be approved by the court or one of the judges thereof.

Bond.

Know all men by these presents that we, John R. Cooke and Wm. H. Macfarland, are held and firmly bound unto Phineas Janney, Hugh Smith, and Hugh C. Smith, executors of Charles Bennett, deceased, in the just and full sum of three hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves and our heirs, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 24th of October, 1846.

Whereas, at a United States circuit court, of the District of Columbia, continued and held for the county of Alexandria, the 17th day of October, 1846, in the cause in which William Wheeler is plaintiff, and the said Charles Bennett's executors and the Common Council of Alexandria and others are defendants, it was ordered and decreed that the demurrer be adjudged good, and that the complainant's bill be dismissed with costs; from which decree the complainant prayed and obtained an appeal to the Supreme Court of the United States. Now, the condition of the above obligation is such, that if the said William Wheeler shall prosecute the said appeal, and pay all costs and damages which may be awarded against him in case he shall fail therein, or if the said John R. Cooke, the principal obligor in this bond, shall pay the same, then the above obligation to be void, else to remain in full force and virtue.

JOHN R. COOKE, [SEAL.]
WM. H. MACFARLAND. [SEAL.]

Sealed and delivered in presence of—

Approved October 30th, 1846. JAMES DUNLOP.

Clerk's certificate.

DISTRICT OF COLUMBIA,
Alexandria county, sct.

I, Cassius F. Lee, clerk of the United States circuit court of the District of Columbia, for the county of Alexandria, do hereby certify, that the foregoing is a true transcript of the record of the proceedings in a certain suit in chancery, lately depending in said court, wherein William Wheeler was complainant, and Charles Bennett's executors and others were defendants, with all things touching the same, as fully as they exist among the records of my office.

In testimony whereof I hereto subscribe my name, and affix the seal of said court, this 9th day of November, A. D. 1846.
[L. S.]
CASSIUS F. LEE, *C. C.*

Filed March 2, 1847.